Ad.

G. M. Rag. 1.

Actions upon the Case FOR DEEDS,

VIZ.

Contracts, Assumpsits, Deceipts, Nusances, Trover and Conversion, Delivery of Goods, and for other Male-feasance and Mis-feasance.

COLLECTED

Out of the many Great Volumns of LAW already Extant.

A Learning of very Great and common use for all degrees of MEN.

With two Alphabetical Tables for the ready finding out any thing therein contained.

By *WILL. SHEPPARD* Esq;.

LONDON,
Printed by *R. I.* for *Samuel Speed*, at the *Rain-Bow*, neer the *Inner Temple-gate*, in *Fleet-street.* *MDCLXIII.*

TO THE
Right Honourable,
EDWARD,
EARL of Clarenden,
Lord High Chancellor of
ENGLAND,
And one of His Majesties most Honourable Privy Council.

May it please your Honour,

THe Peace and Tranquility this Nation enjoyeth, it owes next under God and his Vicegerent to the prudence and moderation of your Honour, whom His Majesties favour, not without the concurrence and suffrage of your own merits hath justly placed

so nigh His Royal Person, and the Helm of Affairs; and herein your Honour hath given sufficient proof of your Fitness for that Grandeure and weight of Imployment that depends upon you, and how well Nature hath adapted your Honour for the Province you have to manage. Experience (the Mother of Truth) hath discovered, that nothing can so well cement the broken and dis-joynted Interests of any Nation, as Moderation and Candor, especially in Matters of Religion; and how much this Nation oweth to your Honour on this Account I need not mention; but shall onely (as a Testimony of my own gratitude) lay at your Honours feet, this Treatise of our *Laws*, the learning whereof is so full of variety, and the Cases so many and voluminous, that it may be thought necessary to regulate our Judgements in them much by the Golden Rule of Equity; and therefore are humbly tendred to your Honour (whose breast) His Majesty hath declared to be amongst us the Fountain of Publick Equity and Conscience. By

Your Honours most humble and devoted Servant,

WILL. SHEPPARD.

To

TO THE READER.

Judicious, and
Courteous Reader,

YOu shall have herein the performance of the promise I made you in my last Peece: The second part of Actions upon the Case, or a Methodical Collection and Report of the various and manifold Cases that this Subject affords in our Books, wherein you will finde nothing of mine, but the method, or labour of putting together, and setting out the grave and learned Judgments, Resolutions and Opinions of the Eminent and Learned Judges, both of former, and present times therein, where perhaps you may finde some Repetitions of the same things. For it is confessed, there are some (though not many) things twice or thrice repeated, and yet not without some Variation and Addition: And in truth I must needs say, it is purposely, and (I think) I may say advisedly

advisedly done, for these Causes;

1. *The Cases and things themselves are very useful and common.*

2. *They are such as fall as naturally under the one, as under the other head where they lye.*

3. *The Cases are so manifold and various in the places where these repeated Cases are found, that were it otherwise, the Reader might perhaps miss of finding where he seeks them, but now probably hee may soon finde them in the one or other place where they lye. And the Work, notwithstanding its many defects, I doubt not but may prove useful, if you can cover the faults, and accept the pains of him who is yours, and the Kingdomes Friend,*

WILL. SHEPPARD.

THE

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Several

Several Books already Printed and Written by William Sheppard *Esq; sometimes of the Middle-Temple.*

Folio's.

AN Epitomy of all the Common and Statute Laws of *England.*
Actions on the Case for Slander.
Actions on the Case for Deeds.

Quarto's.

The Faithful Councillor, or the Marrow of the Law in two parts.
The President of Presidents, or the General President for Common Assurances, by Deeds.
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The Court-keepers Guide.

In Twelves.

A Survey of the Justice of Peace his Office.

Actions

ACTIONS UPON THE CASE, FOR Contracts, Deceits, Nusances, &c.

Chap. I.
Of Actions in General.

AN Action in general is defined to be, a Right of prosecuting in Judgement of a thing which is due unto any one; or the lawful demand of ones Right; or the form of a Suit given by Law to recover a thing, Actio quia agitur de injuria, for it is a complaint of an Injury received. What it is? Sect. 1.

And so it is either The kinds of Actions Real.

1. Real, whereby the Demandant claimeth title to have a Free-hold in any Lands, or Tenements, Rents, or Commons in fee-simple, fee-tail, or for term of life.

2. Personal, whereby a man claimeth debt, or other goods and chattels, or damages for them, or damages for wrong done to his person, and is Personal.

1. Either so personal, that it must be brought by the person himself that hath the wrong, and against the person that doth the wrong, and may not be brought either by, or against either of their Executors, or Administrators: Such are all the Actions that are founded on a wrong done by a man to the person of another, or that for which a man shall recover damages only, as Actions of Trespass, trespass upon the Case, for doing, not doing, or mis-doing, Debt upon an escape, Waste, and Covenant grounded on a personal Agreement, for a thing to be done by the person of the Covenantor, and the like.

2. Or such as doth continue to, and against the Executor and Administrator after the parties are dead.

Mixt. 3. Mixt, wherein not only the thing it self, being a real thing in demand, is to bee recovered, but also damages for the wrong, as in an Assize, and the like.

Other divisions may be made of Actions in general, as into Criminal, Civil, Entire, Popular, &c. Cook upon Lit. 53, 284, 285. Croo. 1. 177.

Action upon the Case what it is? An Action upon the Case is a Writ brought against one for an offence done without force; as for not keeping promise, breaking trust, or the like. And this is called an Action upon the Case, because the whole cause or case, so much as is in the declaration (save onely the time and place) is set down in the Writ: and there no other Action is given in the Case, save onely in some few Cases, where the Plaintiff hath his Election, to bring this or some other Action; for in most Cases this Action is given for remedy against a wrong in a Case where no other Action is to bee had.

The kinds of Actions upon the Case. Sect. 2. The kinds of it. This Action upon the Case is sometimes about Defamations, or Slanders, or Injuries done to a man by words spoken, or by words spoken, and deeds pursuing those words together. And sometimes it is about other things, as about deeds done, or not done, or about injurious deeds; and so it is also sometimes about a mans estate real, as his House, Land, Office, Franchise, or such like thing: And sometimes it is about his personal Chattel, as his horse, cattel, money, or other such like goods; and sometimes it is about his person, and so it is either about his life, or about his health, or about his liberty. And sometimes it is about a Suit in Law; and herein the injury is sometimes by doing, sometimes by not doing, sometimes by mis-doing: And in all these waies it is sometimes by matter of fraud and deceit, and sometimes by breach of trust, and sometimes by negligence, or ignorance, or both; and sometimes by breach of promise, and sometimes otherwise: But more particularly as touching this wee are to know, That this Action of the Case is given either

1. For an Omission, that is, for the not doing of something a man ought to do, called a Non Feasance, which is either
   1. Upon his own undertaking to do it, called an Assumpsit, and this is said to be either, Assumpsit.
      1. Expresse, (i.e.) where a man doth make an expresse promise to do a thing, and doth it not at all, or not according to his promise and undertaking.
      2. Implied, (i.e.) supplied by, and understood to be in the Case by Law, as where I retain a man to do a work for mee; it is implied by Law, that I should pay him for it, albeit I never undertook to do it. And where an Inn-keeper doth entertain a Traveller (as hee must do) that the Traveller shall pay for his entertainment, and the like.
   2. Or upon the Obligation of Law, without any personal undertaking of his own, either expresse or implicite; as where a Smith refuseth to shoe my Horse, 14 H.6.18.
2. For a Commission, (i.e.) the doing of something a man ought not to do at all, called a Feasance, or Male-Feasance, as for disturbing mee in my way, Common, Water, or the like profit to bee taken by mee, or for the cheating and deceiving mee in a bargain, for tearing or spoiling of my deed, or for the rescue of a prisoner taken at my Suit, or for suffering of him to escape, or for the keeping of a dangerous Dogg, that hee knows is used to bite, or for the

the keeping of my goods from mee, that by some accident hee hath gotten into his hands, or the like.

3. For doing something otherwise than a man should do it, called a Mis-Feasance, as where one is to do a work for mee, and doth it falsly and deceitfully, as a Smith doth by my Horse, or a Taylor spoil my Garment, or an Inn-Keeper suffer my goods brought into his Inne to be lost, &c. Others make the Division of this Action after this manner.

An Action of the Case is either

1. For doing of wrong to another, and this is

1. About his estate real, as his House or Land, called a Nusance, as where I have a House, and another by new building, over-building mee, letting up of Tallow-piles, or the like means nied, doth stop up my light, or deprive mee of my healthy Air: Or sets up a house of Office, Pigg-sty, Lime-kill, or other noisome or offensive thing by mee, by which the Air is corrupted and infected to my annoyance in my house.

For doing what a man should not do.
Private Nusances.
To a House or Land.
In the Light.
Aire.

Or, I have a House, or Land, or the like thing, to which doth anciently belong Waies, Waters, or the like profit to be taken by mee, and another doth by turning, stopping or marring of the waies, or by corrupting or infecting of the water, doth hinder mee that I cannot enjoy them, as formerly I have done: Or if one turn or stop the stream of water anciently belonging to my Mill.

In Waies.
In Waters.

Or, I have Land, and another that hath Land by mee stops his ditch, or doth destroy or pull down his banks, by which the water overflows and marrs my Land.

In a ditch, or banks.

Or, where another man hinderth mee in my Common, that I cannot have it, as formerly I have had it.

In my Common.

Or, where one shall set up a tallow-furnace so neer to my house, being an Inne, to annoy mee, and my Guests, or the like; see for these things, N. B. 83. Coo. 9. 47. 14. H. 8. 31. Regist. Orig. 95, 100. Croo. 1. 237. Coo. 10. 139. Leonards Rep. 239. Dyer 319. Croo. 2. 263. Coo. 9. 72. Croo. 2. 263. Coo. 9. 111.

Or, where I have an Office, or a Franchise, and another doth disturb mee in it, or the like, Coo. 9. 37.

Disturbance in an Office, or Franchise.

Or, if one shall remove a meer stone between another mans Land and mine, by which I am hamnished, Lib. Intr. 9. C. sect. 1.

Removing of meer stones.

Or, my Lessee for years shall hold over his term of my Land, and do waste therein, 21. Ed. 3. 18.

Or, my Tenant of Land, whereof I have the reversion, or remainder shall keep mee off from coming to view if any waste be upon it, Croo. 2. 478.

Or, where one shall disturb mee in my Chappel, Croo. 2. 604.

Disturbance in a Chappel.

Or, if one take Toll of mee, where none is due. F.N.B. 94.

Or, where one shall do any thing to raise and corrupt a River wherein I have a several Fishing, so that the Fish dye. Coo. 9. 59.

Nusance in Water, and in my Fishing.

Or, it is about his Chattels personal, as where one abuseth my horse, or other goods lent or delivered to him. 12. Ed. 4. 13.

Abuse of a Loan.

Or, where one breaks my Ring of gold delivered to him to keep. 20. H. 7. 9.

Or, where a Carrier abuseth, or loseth my goods he hath undertaken the carriage of; Or, where my servant, as my Butler, Plowman, Shepherd, hath the charge and trust of any of my Cattel, and shall sell or spoil my cattel or goods under his hand:

A Carrier loosing or spoiling my goods.
A servant spoiling my goods.

Or, where I deliver Cloath to one to keep, and hee makes garments of it. 2. H. 7. 11.

Or, where one borroweth my goods, and then abuseth them. Bulstr. 3 part 94, 95.

Or, where one hath my goods pledged, and he keepeth them after I have tendred the money. F.N.B. 86.

About a Distress.

Or where Cattel be on my ground damage Feasant, and a stranger driveth them out, and prevent me of my distress.

Loan of goods.

Or, one hath lent me any thing for a time, and takes it away from me within the time.

Or, where one distrains my Cows great with Calves, and by the drift of them, or otherwise by that means they lose their Calves, or are hurt.

Distress not distrainable.

Or, where one distrains my beasts at the plow.

3. Or, it may arise upon a wrong done to a man both in his real and personal estate at once; as where a man hath a peece of his house over me, and he lay such a weight upon it, as he breaks down the room over me, and spoils my goods by the fall thereof.

Or, where one teareth the seal off a deed of my Land, &c. Croo. 1. 255.

4. Or, it may arise for wrong done to the person, and this either

1. To our selves, and that either

1. In our name by Slander.

2. Or, in our life, as where one shall threaten and lye in wait to kill or beat me: or where one shall dig a pit, or lay a block in the high way, by which my horse fall, and I am in danger to be hurt by it. Croo. 2. 446. Coo. 5. 72.

3. In our liberty, as where one shall lye in wait to take me as his villain, so that I dare not go abroad about my business, or the like. Coo. 7. 1. 9. H. 7. 7. Bendloe 157.

Poison laid. Physician or Chirurgion.

4. In our Health, as where one shall put poison in my meat, and I am hurt thereby. Or, where a Physician, or Chirurgion, having me under his Cure, shall minister to me pernicious Medicines, and hurt me by them. 21. H. 6. 25.

2. To others, and so by consequence to us: As where one shall beat and hurt my servant, and thereby disable him to do my work: Or, where a Physician or Chirurgion that hath my servant under his Cure, shall disable him by his neglect of him, or by pernicious Medicines and salves spoil his body, that he is made unserviceable to me: Or, where one shall threaten my servants that are upon my work, so that they thereupon desert it. Croo. 2. 567.

Unjust Suits without Authority.

5. Or, it may arise about Suits in Law, as where a man shall vex me by Suits without cause, or by a Suit in the name of a third person without his privity or consent. Coo. 7. 4.

Against an Attorny.

Or, shall vex me illegally with his consent. Huttons Rep. 125.

Or, Where an Attorny shall engage in a Suit for me, without any warrant from me so to do. Coo. 7. 4. Croo. 7. 218.

Rescue out of an Officers hand.

Or, where one shall rescue a Defendant, or his goods, in prison, or attached at my Suit, whereby I receive prejudice in the recovery of my debt. Croo. 2. 241. March. Rep. pl. 76. Croo. 1. 76.

Against a Sheriff for a false Retorn.

Or, where a Sheriff, or other Officer shall make a false Retorn of a Writ to my prejudice. Coo. 5. 93. & 7. 1. Croo. 2. 280.

Against a Juror not returned.

Or, Where one shall thrust himself into a Jury, not being returned, and give a Verdict against me. March. Rep. pl. 132.

Vexatious Suits.

Or, where an Ecclesiastical Officer shall cite one into that Court without cause, or return one cited thither that is not so, and he be hurt thereby. March. Rep. 196. Croo. 2. 380.

Forgery.

Or, where one shall forge a deed in my name, and give it in evidence against me. 5. Ed. 4. 26. or the like.

Or,

2. Or it may arise for an Injury by the not doing of something hee ought to do, and this either

For not doing what a man ought to do.

1. By Law, without his agreement, which is in reference to either

1. His real estate of House, and Land, &c. as where a man is to repair, and keep repaired, a Sea-wall bank, hedge, or mound, to preserve my Land adjacent, and hee doth it not, by which omission the same is overflown, or I am otherwise prejudiced. Bulstr. 2 part 280.

Reparation of Sea banks, Walls, &c.

Or, where I present a Clerk to a Church, and the Ordinary refuse to institute, or the Arch Deacon to induct him. Coo. 12. 128.

Refusal to institute or induct

Or, where a man is bound by his tenure to grinde at the Lords Mill, and hee doth not do it. Bulstr. 1. 295.

Tenure to grind at a Mill.

Or, where being an Officer, and having a Warrant to do a work, that in such a Case ex Officio hee is bound to do, and doth it not. Godb. Rep. 54.

Officer for neglect of his office.

Or, where an Inne-keeper doth not keep my goods safely in his House. Croo. 2. 188.

Inn-keeper.

Or, where I am robbed in an hundred that doth not hotly pursue and apprehend the Theeves.

Hundred not pursuing a Thief.

2. Or, his personal estate of Cattel, my Goods, as where I deliver to one my Sheep to keep, and he suffers them to be drowned through neglect or over-sight: Or, my Chest to keep, and he suffer it to be spoiled, [illegible] 18. Ed. 4. 29.

Or, where one buyes a thing of mee, and suffers it to lye a charge upon mee, and doth not take it away.

3. Or, in reference to Suits in Law. As where my Attorny retained by mee to follow a Cause shall neglect it, and not do his duty in it. Hutcons Rep. 125.

Neglect of an Attorny.

Or, where a Sheriff shall not execute a process at my Suit when hee may. Croo. 2. 532.

Of a Sheriff.

Or, where a Sheriff shall not return his Writ when hee hath executed it. Croo. 1. 216.

Or, shall not keep his prisoner safe, but suffer him to escape. Croo. 1. 240. so of another Officer.

2. For not doing what a man hath agreed and assumed by his promise to do, the which also doth sometimes relate.

1. To a mans real estate. As where one promiseth to buy Land for mee, and doth it not, or buyeth it for himself: or promise to make mee an estate of Land, or to build mee an house, or the like, and doth it not.

2. To his personal estate, as where one doth promise to pay mee my money, cure my horse, bring mee in [illegible] Corn to such a place, or the like, and doth it not.

3. To his person. As where a Physician or Chirurgion doth promise to cure a sick or wounded person, and doth it not according to promise. Bulstr. 2. 338.

Physician, Chirurgion.

Or, where I am a Traveller, and in my Journey, and an Inne-keeper refuseth to entertain mee.

Inn-keeper.

4. To Suits in Law. As where a man that is an Attorny doth promise to recover such a right for mee, and doth it not, or the like.

3. For an Injury by the not doing of a thing well, or doing it amiss, which a man is bound by Law, or his own promise to do, which also doth reference to

3. For misdoing what a man should do.

1. A

A house built amisse.

1. A mans real estate of House, Land, &c. As where a man undertaketh to build mée a House in one form, and doth it in another.

Fire ill kept.

Or, where one keepeth his own fire so carelessly, that my house is burnt by his neglect. 2. H. 4. 18. 8. Ed. 4. 19.

2. A mans personal estate of goods and cattel. As where I put my Horse, or Sheep, to one to be kept, and hee keep them so carelessly, that I lose them, or they be spoiled by his neglect. Croo. 5. 13. 12. Ed. 4. 13.

Things lent abused.

Or, where I lend one a horse, and hée by carelessnesse suffer him to be hurt, and lost. Doct. and Stud. 19. 2. H. 7. 12.

Or, where a Taylor takes upon him to make mée a garment, and by ignorance or neglect spoil it.

Servants careless of their Masters goods.

Or, any servant of mine that hath any charge of my goods or cattel, shall suffer them by neglect to be spoiled.

Or, where I lend my horse to ride so far, and he ride farther with him.

Common Carrier.

Or, where a Common Carrier by neglect suffers his Cartiage to be lost or spoiled.

Plowing of Land.

Or, where one taketh my Land to plow, and doth it at an unseasonable time. 21. H. 7. 41. Croo. 2. 330. Hob. pl. 17. 18.

Or, where a Farrier taketh upon him the cure of my horse, and doth use contrary and dangerous medicines, and hurt him. 19. H. 6. 47.

Barber.

3. His Person. As where a Barber doth undertake to barbe mée, and doth it with an unwholesome Razor.

Or, where a Chirurgion or Physician undertaketh the cure of such a disease or wound, and doth apply unwholesome medicines, or salves, or is otherwise notorioully negligent about it. Bulstr. 2. 232. 233.

Attorny Escape.

4. To Suits in Law. As where an Attorny is retained by mée, to sue in such a way: And hee doth it in another of his own head or doth it deceitfully.

Officer.

Or, a Sheriff having arrested a man at my Suit, suffer him to escape. Brownloe Rep. 12. 21. H. 7. 41. N.B. 145. G.

Or, where a Bayliff shall attatch a mans goods at another mans Suit, and then deliver them back to the Defendant again.

Or, where any Ministerial Officer of Justice shall make a false return, or do any other part of his office falsly. 9. H. 6. 60.

In the next place this Action is given to a man;

4. For fraud or breach of trust.

4. For an injury done by breach of trust, or by some fraud or deceit used, which is sometimes in a mans real estate, and sometimes in his personal. As where one shall personate mée in a Court of Justice, or elsewhere, and do anything in my name to my hurt. March pl. 76.

Or, where my Counsellor or Attorny shall discover my Council, or otherwise break their trust in my business. 11. H. 6. 14.

Or, where I retain one to buy a Lease of Land for mée, and he buyeth it for himself. 20. H. 6. 4. 25. 3. H. 7. 2.

Forgery.

Or, where one shall forge a deed or statute in my name, and make use of it against mée. 5. Ed. 4. 146.

Or, where one subtilly makes mée pay money that I have paid before. Croo. 1. 100.

Or, where one sells Land or goods to another, and then sells it to mée. F.N.B. 99.

Or, where my servant that hath the custody and care of my Cattel or goods of mine, kill, sell, or abuse them, or neglects their care, and suffers them

them to be spoiled, or lost. 27 H. 8. 25. 12 Ed. 4. 13.

Or, where I trust one to do any work or business for me, and he doth it deceitfully. 11 H. 6. 18.

Or, when my servant or other shall get money of mine out of anothers hands by a counterfeit Letter. Croo. 2. 223.

Or, where I retain one to take a band for me, and he takes it for himself. 3 H. 7. 14. 17 20 H. 6. 4. 25.

Or, where one cheats mee at play by false Dice. False Dice.

Or, where one shall act as an Executor that is none, to the prejudice of the true Executor.

Or, where one doth deceive mee in or about a bargain. Croo. 2. 387.

Or, where one doth sell mee a Saphire for a Diamond, and warrants it so. Croo. 2. 419. In a sale with Warranty.

Or, where one doth sell mee a horse, and warrant him sound, and he is not so. 11 H. 6. 22. Owens Rep. 60.

Or, where I trust one to do any work for mee, and he doth it falsly, and deceitfully. Lanes Rep. 65. Croo. 2. 266. Without Warranty.

Where one shall sell Wine mixed with Water; or corrupt victuals, knowing them to be such.

Or, where one shall sell a Horse, Cloth, or any thing for good, that he knows to be naught, or for true, that he knows to be counterfeit. Croo. 2. 470.

Or, where one sells, and is to deliver that which is good of wares, or any commodities, and delivers that which is nought for good. Dyer 75. 2 H. 7. 91. Coo. 4. 18. 13 H. 4. 2. Deceitful sales.

Or, where one selleth a Horse, or other goods, as his own, that is none of his own. Croo. 2. 197.

Or, where a Clothiers Cloth, and mark of his Cloth is in request, and another Clothier shall counterfeit it upon deceitful Cloth, to advance his own Cloth, or the like. Croo. 2. 168. By a Clothier.

Or in the last place, this Action is given

5. To relieve a man against an injury done to him by another, in the keeping away of his cattel or goods from him, &c. 5. For a Trover and Conversion. Sect. 3.

As where a man happeneth to get the possession of goods, or cattel of mine, by finding, or the delivery of another, or of my self, or by the sale of them, by one that has no right to them, or otherwise; and he that hath the possession of them, hath neither right of propriety, nor right of possession in them, and hee doth convey or deliver them over to another, or waste and consume them, or after demand, refuse to deliver them to mee, and converts them to his own use. Dyer 306. Coo. 2. 3. & 5. 147.

By all which wee may perceive, that this Action doth sometimes arise upon, and is conversant about a Contract, Covenant, or Agreement. And sometimes doth arise upon, and is conversant about other things, as upon or about a Nuisance done to a man in his way, light, common, office, franchise, or the like. And sometimes doth arise upon, and is conversant about some matter of deceit, and fraud, without a Contract. And sometimes about some matter of breach of trust, without an Agreement or Covenant. And sometimes about some matter of Trover, and Conversion of Goods. And sometimes about delivery of Goods to another, without any Contract or Agreement in the Case. And sometimes about Suits in Law. And sometimes about a remedy against a Hundred for a Robbery committed within it. And sometimes about some other doing, not doing, or mis-doing in other Cases, as will more largely appear in the particulars following.

As

As to the first kind of Action of the Case, for slanderous words, or defamations, and deeds pursuing such words, that are, or may be injurious to the name, or credit; this is that which wee have dispatcht in our former Treatise under the title of Actions of the Case for Words, a Conspiracy or Libel. And now our next work is, to open the Law touching other Actions upon the Case about Deeds; wherein wee shall observe this order.

1. Wee shall lay down some generall things about all kind of Actions whatsoever.

2. And then wee shall lay down some general things about all kinds of Actions upon the Case whatsoever.

3. And lastly, shall descend to the particular kinds of Actions upon the Case; As of an Action upon the Case about a Contract, about a Nuisance, about a Breach of trust, about a Deceit, about Suits in Law, about Trover and Conversion, against a Hundred, about a Robbery done, about Male-feasance, Non-feasance, Mis-feasance, in other things. And then wee shall add a word or two about the pleadings in these Actions.

CHAP. II.

Some General things about all kinds of Actions whatsoever.

As to all kinds of Actions in generall, these things are to be known, 1. That in every Action, and the proceeding thereupon, three things are to be done. 1. The cause, or matter of fact must be shewed; and this the party must do. 2. The Law must be shewed, and Judgement given according to the Law, upon the matter of fact appearing in the Case; and this the Judges must do. 3. The Judgement given by the Judges, must be executed; And this the proper Officers appointed for the doing thereof must do. Plow. 36.

Persons disabled to sue. Out-lawed person. Excommunicate person. Villain. Alien born. Attaint in a Premunire. Recusant convict. Abjured person.

2. In every Action, he that brings it must look to these things. 1. That he be a person able to sue, and not disabled by Law: For an out-lawed person, an excommunicate person, a Villain, an Alien born, one that is attaint in a Premunire, a man that is entred into, and professed in any order of Religion, one that is attainted of Treason, or Felony, a Convict Recusant, or abjured the Realm, or a Feme Covert without her Husband cannot sue. Lit. Sect. 196. Coo. upon it. 135. And yet here wee must understand, that this disability is only for that time whiles the Cause remains. For when the Attainder of Felony, or Treason, or in a Premunire is off, by Reversal, Pardon, or otherwise, or Excommunication is over, by Absolution, and the like, then they may sue as another man may do.

3. That this disability doth extend only to Suits in their own right. For as Executors, or Administrators in the Right of the Testator, they may sue whiles the disability doth continue. Lit. Sect. 199. 200. Dyer 275. 371. 227. F.N.B. 36. Coo. 8. 68. But Ideots, mad men, such as be deaf, and dumb, or any other man, woman, or childe, except such disabled persons as aforesaid, may bring any Action upon the Case, or other Action. And herein also this is further to be known, that wheresoever a Defendant in any Action shall desire to take advantage of such disabled persons Suit, he must do it at the beginning of the Suit, before he make any answer, or plead any other plea to the Action. See the Books before.

Ideots, Mad men, Deaf and Dumb men, children.

3. That

3. That in every Action the labour of proving must rest upon the Actor. Coo. 4. 70.

4. That hanging a Suit nothing may be innovated. Coo. upon Lit. 344.

5. That hee that hath once renounced his Suit, can no more revive it; and therefore a Retraxit in one Action, is a bar to all other of the like, or of an inferiour nature. Coo. upon Lit. 139. Retraxit.

6. That a Recovery in one Action, is a bar to all other Actions touching the same thing, where the Demand and Recovery is of a thing certain. And one man is not to sue another man again for that wrong for the which hee hath recovered a recompence against him in another Action. But where the thing demanded, and recovered, is incertain, there it is otherwise. Stiles Rep. 4. Yelvertons Rep. 67, 68. Recovery in one barre in another Action.

7. That where a man hath recovered the same thing in kind, or a Recompence for it of one man, hee may not afterwards sue another man for it, to recover it again. Yelverton 67,68. 14 H. 4. 22. 7 H. 4. 30. Barre to this Action.

8. That when in an Action it shall appear by the Plaintiffs own shewing, that hee hath no cause of Action, or that hee hath brought his Action before the Cause of Action was given to him, it must needs pass against him. And yet if a man taken in Execution by the Sheriffs Warrant, be rescued from his Bayliffs, the Sheriff may sue the Rescuers before hee himself bee sued for the escape. Croo. 1. part last publisht 53. Croo. 2. 70. Yelverton 70, 71. Pleading. Rescue of a Person arrested.

9. That a man shall not be otherwise punished in any Case for the bringing of a false Action in a proper Court, than by the payment of the Costs given in the Action in the same Court. Yelvertons Rep. 117. False Actions.

10. That by a special Customs an Action may lye in some Cases, in which at the Common Law no Action will lye. Stiles Regist. 9.

11. That if one be barred by Plea to the Writ, hee may have the same Writ again. If by Plea to the Action of the Writ, hee may have his Right Action. If the Plea be to the Action, and hee be barred by Judgement upon Demurrer, Confession, or Verdict, in a personal Action, it is a bar for ever. If in a real Action, hee is put to a Writ of a higher nature. Coo. 5. 7. Barre in one, is a Barre in another Action.

12. That a violent Intendment may bring a man within the compass of an Action. M. 23. Car. 1. B. R. by Rolls Ch. Justice.

13. That in some Cases a man may sue at Common Law, for that which hee may sue in the Spiritual Court. Stiles Regist. 9. Mich. 23. Car. 1. B. R. Spiritual Court.

14. That the Kings Patent will not give the Patentee an Action, which the Common Law doth not allow of and warrant. Stiles Regist. 9.

CHAP. III.

Some general things onely, or most properly appliable to Actions upon the Case.

Sect. 1.

AS to all kinds of Actions of the Case in general, these things are to bee known. Sect. 1.

1. That to ground this Action upon the Case, there must appear to be

in the Case some malice in the party that doth the wrong, and some damage to the party, to whom the wrong is done. For if there be malice, and no damage done by it, there can be nothing recovered, so the Action will be vain, and to no purpose; and if there be damnum sine injuria, damage and no malice, it is not punishable by Law. And yet this is here to be observed, that albeit damage without malice, nor malice without damage can raise an Action, yet malice may make the wrong greater, and where it is actionable aggravate the damages. Stiles Regist. 3, 4, 5. And in all Cases where there is in the Case Damnum and Injuria both, there for this he may have this Action at the Common Law. Coo. 10. 72, 76. Bulstr. 2. 265.

Malice and damage must bee in every Action.

2. It is said in some of the Books, that a man shall never have this Action upon the Case, where he may have any other remedy by any Writ founded in the Register. And that this is given onely in such Cases where there wants such a Remedy. Croo. 1. last publisht 520. But it is said in very many Books, and agreed in very many Cases; That this special Action of the Case will lye in very many Cases, wherein there is another Remedy by a formed Action in the Register. And so the frequent practice is at this day. Coo. 4. 92. in Slades Case. F. N. B. 94. Croo. 1. last publisht 520. Coo. 4. 94.

This Action given where is none other.

3. That this Action of the Case for a thing done by a male-feasance, or for a Nusance, Deceit, false Retorn of a Writ, Escape, Rescues, and the like, must be brought in the life time of him that doth, and of him that suffereth the wrong. The Rule being for all Actions personal, That they dye with the person, and therefore they will not lye for, nor against an Executor, or an Administrator. But an Assumpsit without an Especialty is no more personal than a Covenant by Especialty; and therefore this dyeth not with the person. Coo. 4. 92. and 9. 86.

It must bee brought in the life time of the parties. 6. 188, 205, 310,

4. That some of these Actions of the Case may be laid vi & armis. Croo. 1. 236.

Vi & armis.

Sect. 2.

Who is to sue in this Action upon the Case, and for whom it lyeth.

For the persons that may sue in this Action, take these things,

1. That all persons, but such as are before mentioned to be disabled, may sue, the Infant by prochein amy, the rest in person.

2. Regularly the Husband must joyn with the Wife, and she cannot sue in her own name without him in any Case 27 H. 8. 24.

For Husband and Wife.

The Husband and Wife may joyn in a Suit upon an Assumpsit made to the Wife dum sola fuit. Hill. 9 Jac. B. R. Wolverrons Case.

In an Assumpsit.

The Husband alone may sue upon an Assumpsit made to the Wife, and declare as upon an Assumpsit made to himself. 27 H. 8. 24, 25.

If the Husband make a Lease for years of his Wives Land, and the Lessee do burn the house, it is doubted whether the Husband alone may bring this Action without the Wife, and therefore safe to joyn her with him. Croo. 1. last publisht 461.

For Mis-feasance.

In case of delivery of goods by them, and upon an Assumpsit made to the Wife, and so generally in all cases (as some say) where in the Action nothing but damages is to bee recovered, and the Husband alone may release, there hee alone may bring the Action; But it is most safe to joyn her with him. Croo. 1. 316.

Assumpsit.

3. 8. being a Dutch-man, and his Parents Subjects to the King, brought his Action against a Customer, for not putting Cocker upon Merchandizes, and tendring the Customes. It was said, that it will not lye for

By a Dutchman.

for the Dutchmen, not of out Congregation, nor free of any Company of Merchants. By Cook Ch. Justice, Pasche 14 Jac. Stephens Case.

If a promise be made to two, or more, no one of them may sue whiles the rest live; But after the death of any, the Survivors may sue. Brownl. 2 part 99. Coo. upon Lit. 297. But two or more may not sue in one Action for several causes, though of the same kind. Coo. upon Lit. 195. Croo. 2. 647. So they cannot joyn in a Suit for Slander. Dyer 19. Assumpsit to two, or more.

The Executor, or Administrator may bring this Action in many Cases. As against the Lessee for putting him out of his Tearm. N. B. 92. G. Coo. 4. 95. Regist. 97. Upon a Trover and Conversion, and for a Conversion in the life time of the Testator. Croo. 1. 159. and 2. last publisht 377. So for mony for Corn sold. Lib. Intr. 4. B. Sect. 2. Upon an escape in the Testators time. Bulstr. 3. 112. Upon an Assumpsit to the Testator to marry or pay 20 l. Lib. Intr. 10. Sect. 5. B. Upon an Assumpsit to save the Testator harmless from an obligation. Lib. Intr. 12. B. Sect. 2. For an Executor, or Administrator.

An Assumpsit may be made in a absence of an other if he will agree to it afterward, 27. H. 8. 24. Glisson's Epist. pag. 85. Brook Regist. pag. 31.

If there be more Executors, or Administrators than one, and a special promise be made to one of them about any thing referring to the Executorship; in this case happily hee alone may sue. But in all other cases they must joyn. And the safe way in case of a promise to one, is to sue in all their names, as may be done. Croo. 1. last publisht 315. See Hobb. pl. 229. chap. 4.

Sect. 3.

For the second thing, the persons against whom this Action lyeth, or may be brought, take these things. 3. Who is to be sued, and against whom this Action may be brought. Sect. 2.

1. This Action will lye against Ideots, mad Men, Infants, persons deaf and dumb, or any other Man, Woman, or Childe; But if an Infant be sued, hee must defend by his Guardian, all other doit in person.

2. The wife cannot bee sued alone without her husband for any thing shee hath done, as hee may in some cases bee for what hee hath done. And where they are both sued together, albeit hee may in some cases answer without her; yet shee may in no case answer without him. 34 H. 6. 29. Lanes Rep. 66, 67. Against Husband and Wife.

This Action will lye against husband and wife, for not repairing the Sea banks upon the wives Land. 7 H. 4. 31.

It will lye against the husband for cloaths bought by her self for her use; and for Merchandizes to make cloaths, albeit the Contract be made without the command, or privity of the husband. Brownl. and Goldsb. 47. Upon a bargain

Where the wife shall make a promise for the husband that is binding to him, the husband, not the wife (who is but an Instrument) must bee sued upon it. Stiles Regist. 6. Mich. 22. Car. 1. B. R.

It will lye against husband and wife, for the not repairing of the Sea banks upon the wives Land. 7 H. 4. 31.

3. This Action will lye, and may be brought against an Executor, or Administrator, upon the Assumpsit of the Testator; and for any thing by way of Contract, and where the Testator doth deliver goods to another, and hee dye, and the like. Lib. Intr. 4. C. sect. 3. Croo. 1. 92. Coo. upon Lit. 53. Dyer 114. Yelverton 89. Coo. 9. 87. Plow. 182. And this without Averment of Assets in the declaration. Croo. 1. last publisht 59. 91. Against an Executor, or Administrator, upon an Assumpsit. Averment of Assets.

But this Action will not lye against an Executor, or an Administrator

for a personal Mis-feasance, such as this, where it was in the Testator; as where hee is a Sheriff, or keeper of a prison, and suffer an escape, or deal falsly in his office, by a false Retorn, or not Retorn of a Writ, or the like. Dyer 322.

Escape.

And yet it will lye against the Executors of a Sheriff, that hath levied money upon an Execution at my Suit. For this is not like to a personal Mis-feasance, which moritur cum persona; And in cases where hee is chargeable for levying of money, and not paying it over; this is such a thing, as wherewith his Executors, as well as himself, are chargeable. Croo. 1. 387. 216. 370. Plow. 37.

Personal Contract.

It is said, it will not lye upon a promise of their Testator, to pay money in marriage, or as a Marriage-portion, a summe of money in consideration of a Marriage. And so it hath been formerly adjudged. Croo. 1. last publisht 454. But it seems the contrary hath been since adjudged; and is now agreed to be the Law. Croo. 2. 404, 418.

It is said, it will not lye against the Executor or Administrator of one that is a Lessor, and hath covenanted for himself onely to pay quit Rents, during a Tearm. Coo. 9. 87. Yelverton 89. Herlakendens Case M. 2 Jac. Agree per Curiam.

If an Infant be an Executor, and prove the will, and a friend sell some of the goods for the Infant; hee may not for this be sued as an Executor. Croo. 1. last publisht 254. See more of this chap. 4. Croo. 2. 404, 405. and Croo. 1. last publisht 314, 315.

4. It may lye against the Master upon the sale and warranty of his servant. 11 Ed. 4. 6. And where the servant shall make a promise for the Master, the Action must be brought against the Master, and not against the Servant. Stiles Regist. 6.

Against the Master upon the Contract of his Servant.

It will lye against the Master of a Carrier upon the receipt of goods by the Servant. Pasche 9 Jac. B. R. Wornhall and Bradshaw.

Against others for Mis-feasance.

5. If a Smith that hath my Horse to shoe, doth lend him to another, and hee prick him, I may have my Action against the borrower. 12 Ed. 4. 13.

Physician Deceit.

If a man undertake to cure mee of a disease, and hee bid his servant, he shall not cure mee; I must habe my Action against the Master, and not against the Servant. 11 Ed. 4. 6, 7.

Assumpsit by two or more.

6. Where two or more joyn in an Assumpsit, the Action must bee brought against them all, whiles they are alive. But after the death of any one of them, it may be brought against the Survivors or Survivor of them, or against the Executor or Administrator of the last Survivor of them. Brownl. 2 part 207. Coo. upon Lit. 331. Trin. 7 Jac. B. R. Brereton and his wife, and King and Milner.

Declaration against some Defendant by name *simulcum aliis, &c.*

And where the Action is to bee joynt, and some of the persons are, and some of them are not known to the Plaintiff, hee may bring his Action against them that are known by name simulcum aliis, for the rest not known. Stiles Regist. 8. Pasche 23. Car. 1. B. R.

The Plaintiff may not sue several Defendants in one Writ in Actions of the same nature. Coo. upon Lit. 381.

If two sue mee in the Admiralty for a thing done in Corpore Comitatus, I may for this bring my Action against them severally. Dyer 159.

3. What Action the Plaintiff may have, and what not; and where hee may have an Action of the Case, or some other Action.

Sect. 3.

Sect. 4.

For the opening of this, these things are to bee known.

1. That one may have remedy by several Actions for one and the same wrong. Laws Rep. 57.

2. That

2. That one may in many cases have remedy by this Action upon the Case for a wrong, or he may have some other Action at his choice. Stiles Rep. 164. 342. Croo. 1. 63.

3. That upon the Bailment, and detainment, abuse, or loss of goods, the party grieved may have this, or some other Action. 18 Ed. 4. 23. 18 Ed. 4. 8. Stiles Regist. 6. Dyer 121. 21 Ed. 4. 67. Upon Bailment of goods.

4. That upon an Insimul computaverunt, the party to whom the promise is made, may either have an Action of Debt, or this Action at his choice. Stiles Regist. 7. Upon an *Insimul computaverunt.*

5. It is said, that if I be seized in Fee of Land adjoyning to a River, and one that is seized in Fee of the River, doth stop up the water, and cause it to drown my Land, that my proper remedy in this Case is by Assize, or Quod permittat. Croo. 1. last publisht 520. Upon a Nusance.

6. That if I take a mans goods from him, and keep them till he pay me 10 l. he may not have this Action for this, but Trespasse. Lanes Rep. 68. 18 Ed. 4. 23. Upon a Trespass.

7. That if one arrest me without any warrant, I may have (for this wrong) remedy by this Action, or an Action of Trespasse. Lanes Rep. 68. 18 Ed. 4. 23. Upon a false Imprisonment.

8. That where the Lessee, or his Executor is ousted of his Land by the Lessor; he may have his remedy by this Action, or an Action of Trespass. 18 Ed. 4. 23. Lanes Rep. 68. Upon the ouster of a Lessee by the Lessor.

9. That if my servant buy goods for me, and give a note of the receipt of them to my use, and promise the mony at the day, this Action, not Debt, must lye for it. Dyer 230. Upon a Contract.

10. That if I buy Corn of a man, to be delivered at such a time and place, and he fail mee, whereby I am forced to buy elsewhere, I may have for this wrong, this Action, or a Detinue. Dyer 22.

11. That if a Sheriff have one in Execution for my Debt, and suffer him to escape, I may have against him this Action, or an Action of Debt. Coo. 4. 92. Upon an Escape in a Sheriff.

12. That if a stranger drive my cattel on another mans ground, to the end that he may distrain them Damage-feasant, I may have this Action, or another at my choice. Lanes Rep. 67, 68. 9 Ed. 4. 4. Upon a chasing of cattel.

13. That if a Millard will not suffer me to grinde Toll-free, but by force take Toll from me, where none is due; this Action, or some other will lye for it. 41 Ed. 3. 24. Action 31. So if the Toll of such a Fair be mine, and another disturb me, and set up a Toll-both there: Or an Officer shall force Toll from me, that ought to be quit of Toll; I may either have this, or some other Action. Coo. 4. 94. Croo. 2. part 122, 123. About Toll against a Millard.

14. If one retain me, being a Taylor, to make Cloaths for him, and put me to buy Cloath, I may have this Action of the Case, or Debt, for my mony. Croo. Rep. 2. 626. For a Taylor for making of Cloaths.

15. That if I being Bayliff of a Hundred, and prescribe to have of every Brewer in the Hundred three gallons of his best Ale for 7. d. and be disturbed in it; I may have this Action for it. But it is doubted what other Action I can have. Trin. 19. R. 2. Action, &c. 51. About a Franchise.

16. That if one grant me yearly for my life Hay and Straw in his house for two Kine, and I am seized and disseized of it; I may have this Action, but can have none other. 4 Ed. 4. 2. Action, &c. 17. What Action shall be ban for a Nusance. See in Nusance chap. 5. Croo. 1. last publisht 428. Stiles 3.

17. That this Action will lye upon a Contract for a Tearm of years of Land, or upon a Lease-Parol. So about Charters and Writings of Land. Upon a Contract for a Lease of Land about Charters.

About Timber-trees.

Land. So upon a Contract about Timber-trees growing on the Land.

About an Arbitrement.

18. That for a Debt certain referred to Arbitrement amongst other things; this Action may lye upon the Arbitrement. Stiles Regist. 7.

Upon an Executory Contract

19. That Cases of a Contract, wherein is a sale, if there be any thing in the Contract Executory, and to be done, as to pay any part of the price for the thing sold, or to deliver any part of that which is sold, or the like, there is use of this Action.

For a Trespass, or Detinue of my goods.

20. That it is held by some, that in most cases where a man hath taken my goods into his possession, as a Trespasser, that Trespasse lyeth for the wrong; or where he hath my goods in that nature, that I may have a detinue for them; that if I will, I may demand the things; and if the party refuse to deliver them, that there bee a Conversion in the Case, I may have this special Action of the Case, or the other Action at my choice. So held. B. R. Mich. 22 Car. B. R. And he may have either a Detinue, or an Action of the Case at his Election. Stiles Regist. 7. Croo. 1. last publisht 781. Dyer 22. Croo. 1. 63.

Debt. Arrearages of Rent.

21. That an Action of the Case will not lye for Arrearages of Rent upon a Lease for years, for an Action of Debt lyeth properly in the Case. Stiles Regist. 7.

Contract that sounds in the Realty.

22. That this Action will not lye upon a Contract which sounds in the Realty. But Quere, if it be mixed with other matters which are not in the Realty, whether it will lye or no. Stiles Regist. 9.

Debt. Monies to bee paid at several daies.

23. That where one binds himself to pay mony yearly, or quarterly, at several daies, no Debt will lye upon the Contract till all the daies be past. But an Action of the Case will. And therefore if one contract with mee to pay mee 10 l. a year for four years; in this Case upon every failer, an Action of the Case may be had. But an Action of Debt will not lye till all the daies be past. Coo. 3. 22. 11 H. 6. 18. Coo. 4. 94. Dyer 113. Broo. 108. So if one agree with mee, to give mee every year during my life twenty bushels of Corn; or a summe of mony is given in Marriage to be paid at several daies. Coo. 4. 94.

Action upon the Case implied in every Contract.

24. In Trin. 14 Jac. B. R. Cullimore and Eginson. It was held, That in every Action of Debt, an Action of the Case is implied. And when it appears how the Debt grew due, then it is a good Assumpsit. Yet see Coo. 11. 89. So where one hath goods, by which he is chargeable to mee in a Detinue; I may have this, or an Action of the Case. Croo. 1. last publisht 781. Dyer 22.

Sect. 5.

5. Where two Causes may be in one Action, or not. Sect. 4.

For the opening of this question, take these things.

1. That where there are two several damages done to the party, he ought to have two several Actions, and not to joyn them in one Action. Stiles Regist. 5. And yet it was said in B. R. That one may joyn two Debts due upon several Obligations, or other personal actions in one Action. Stiles Regist. 10.

2. That one Action of the Case may be brought for divers Assumpsits. But if the causes and wrongs be of divers natures, as Debt, Trespasse, and the like, albeit they bee against one person, yet they cannot be joyned together in one Action. Coo. 8. 87. 3 H. 4. 13. 11 H. 6. 18. Croo. 1. 14.

3. That if the Defendant bee charged by one and the same Writ for one thing as Executor upon the Contract of the Testator; and for other things of his own buying, and declares that upon account the Defendant was

was found indebted in these summs, and promised him payment; this is not good in one Action, for the Defendant is to be charged two manner of wayes. Hobb. Rep. pl. 115. And yet see Hobb. Rep. pl. 8. Where an Action of the Case was brought for Slander about Murder, and for a Conspiracy to take away his life for it, and both in one writ, and allowed in a writ of Errour.

4. That albeit in Actions real a man cannot put two causes in one Action, yet in personal Actions one may comprehend several wrongs and causes of Action, &c. Coo. 8. 86. But an Assumpsit of the Testator for his Debt, and an Assumpsit of the Executor for his own proper Debt may not be joyned in one Action against the Executor. Hobb. 88. Jenkins Century 7. Case 49. See more of this, Yelverton 93. 94.

Sect. 6.

A Contract cannot in any Case be apportioned, but either the thing agreed for must bee all paid, or all lost; as if a Lease Parol be made yelding Rent, and the Lessor enter upon a part of the Land, the whole Rent is suspended. And so if a stranger enter upon part by title Paramount. 9 Ed. 4. 1. Broo. 52. So if the husband sell part of the Trees upon his wives Land for mony, and the Vendee take part of them; and before hee hath taken the rest, shee dye, yet the Vendee must pay all the mony. But if a day bee set to cut them, and not before, and shee dye before the day, then if hee had cut part of the Trees, hee should not have paid any of the mony. 18 Ed. 4. 6. Broo. Contract. 26. 6. Where a Contract may be divided, or not.

If one make a Lease for years, and sell goods all by one Contract for an entire summe of mony, and the goods bee tak away from him before the mony bee paid, yet the whole mony must be paid. So if one sell two Horses for ten pound, and one of them is another mans, and hee take it away, yet the whole ten pound must bee paid; but hee shall have his Counter-remedy against the seller. 7 H. 7. 4. Broo. sect. 52. 135. 12 H. 8. 13. 9 Ed. 4. 1. So if a Contract be about mony partly usuriously lent, and partly not; the Contract is void for all. 38 H. 6. 28.

Sect. 7.

As to this, within what time this Action must be brought, these things are to be known.

1. That all Actions upon the Case (other than for Slander) must be brought within six years after the cause thereof accrued, if the Plaintiff bee then of full age, discovert, compos mentis, out of prison, at liberty, and in England; otherwise within six years after the impediment removed. And for slanderous words it is to bee brought within two years after the Cause, or Impediment removed. Stat. 21 Jac. chap. 16. 7. Within what time an Action upon the Case must bee brought.

For the understanding of which Statute, and knowledge of what concerns this Point, as to these kind of Actions, wee are are to know,

1. That words spoken to the slander of a mans Title to his Land, and not of his Person, are not within Statute.

2. That if Judgement bee given, or arrested, or the Defendant outlawed, and the Out-lawry reversed in a former Action, a new Action may be brought within a year after the Reversal, Arrest of Judgement, or Out-lawry. Croo. 1. part 114.

3. That where a man is barred in Law by lapse of time, hee is barred in equity also. In March. Rep. pl. 207.

4. That

4. That the years must be accounted from the time that the cause of Action is compleat, as when it is upon a promise, to the time of the breach of the promise. Croo. Rep. 1. 81. 98. And the account shall bee made from thence to the Teste of the Original. Croo. 1. part 114.

5. That if the Plaintiff set forth in his Action, that the cause of Action was beyond the time named in the Statute, then the Action will go against him upon his own shewing. And if the Contract bee laid to bee within the time, and by the evidence it shall appear to be without the time, then the evidence will not maintain the Action, and so it must go against the Plaintiff also. Croo. Rep. 1. 81. 98.

6. That the Defendant may take advantage of this, without pleading of the Statute, and without demurrer. Croo. Rep. 1. 116, 117.

7. That if the Defendant in the Suit do not take exception at the Action brought, or plead the Statute, the Action will go against him, however it bee laid by the Plaintiff. Croo. Rep. 1. 277, 292.

8. That if one take out a Latitat within the time limited, it is a good bringing of the Action within the time, and hee is not barred by the Statute, albeit hee do not declare within the time limited by the Statute against the party. Stiles Regist. 10.

2. That an Action of the Case (which is a personal Action) must bee brought in the life time of him that doth, and of him that suffereth the wrong, unless it bee in case of a Contract, and upon an Assumpsit. Coo. upon Lit. 53.

3. That upon an Assumpsit brought after six years after the promise and breach, moved in Arrest, &c. two Judges were against two, that the Statute must be pleaded or demurred unto, or no advantage can bee taken of it. Croo. 1. 116. See for this more in Croo. 1. 81. 98. 116. 243. 245. 254. 255. Hetley Rep. 138. 148. Huttons Rep. 106.

Sect. 8.

8. Where it must bee laid.

1. A Transitory Action may bee laid in any County at the will of the Plaintiff, yet generally it is (and so in reason ought to bee) laid in the County where the Cause of Action did first arise. Mich. 22 Car. B. R. Stiles Regist. 6. Coo. upon Lit. 282.

But an Action brought against a Constable for a thing done by him by virtue of his office, ought by the Statute to be brought against him in the County where hee is Constable, and not elsewhere. 21 Car. B. R. Stiles Regist. 6. But generally all Actions shall bee laid where the cause of Action appeareth to arise. Hobb. Rep. pl. 224.

2. Transitory Actions may be brought within Corporations, for their priviledges do properly and onely extend for the trial of such Actions, the causes whereof do arise in their own Jurisdiction. Mich. 22. Car. 1. B. R. Stiles Regist. 6.

3. Where matter in one Country depends upon matter in another, the Plaintiff may chuse his County, if it bee not in cases where the Defendant upon the general Issue pleaded, may bee prejudiced in his Tryal; as two conspire in one County, and endict in another. Election of the Action to be brought in either, but if he bee indicted, but not by them, there it shall bee brought where the Conspiracy was. If Menace bee made in E. whereby my Tenants depart into L. Action shall bee brought in E. If an Action bee founden on two things material, and traversable into two Counties, Action may bee brought in either of them, and where matter of fact is mixt with matter of Record, and the matter in one County

County doth depend on the matter in another County; there the Plaintiff may chuse in what County hee will bring this Action. Coo. 7. r.

4. If one promise to cure mee of a wound in London, and apply unwholesome Medicines in Middlesex, the Action must be laid in Middlesex. 11 R. 2. Action, &c. 57.

5. If an Action be brought against an Inn-keeper, upon the Customs of England, it ought to be brought in the County where the Inne is. Mich. 29. Eliz. in B.R. Godbolt. See for this more. Croo. 1. last publisht 574. Godb. Rep. pl. 49. Stiles Rep. 214, 215. Hobb. pl. 262.

CHAP. IV.

Of an Action upon the Case arising upon, and conversant about a Contract, or Agreement; And of an Assumpsit; And where an Action will lye about this, or not.

Sect. 1.

THe Action of the Case doth very frequently arise upon, and grow in, or about some matter of Bargain, Promise, or Agreement; and for the setting forth of that which doth belong to this, these things are to be known.

1. That Contracts, Bargains, and Agreements, are sometimes about Houses, Lands, Rents, and such like things; And sometimes they are about Goods, Cattle, and such like things; and about Houses, &c. They are sometimes about the Inheritance, or Free-hold thereof; and sometimes about Leases for years thereof onely; and the Contracts about these things alls, and so all manner of Contracts, are some of them made, and put in writing, sealed and delivered. And then it is called a Deed. To this wee have nothing to say in this place. But of Agreements about Chattels especially; and therein mostly of Contracts executory, and Agreements about matters to bee done; and for this it is to be observed. Part 1. Deed.

1. That Contract (largely taken) is an Agreement between two, or more, about something to bee done, whereby both parties are bound each to other, or one is bound to the other. But (more strictly) it is taken for an Agreement between two, or more, for the doing, or having of one thing for another. Or (more exactly) it is taken for an Agreement for the buying and selling of goods, or Cattle, whereby property is altered. Plow. 130. 140. 338. Contract, what

2. That a Contract is said to be either Real, where it is about Land, or some such real thing: Or Personal, where it is about a personal thing, as about Marriage, payment of money, delivery of goods, or the like. Contract is alls said to bee either in Deed, or Expresse, as where I agree to give you for a Horse you have sold to mee 10 l. Or it is implied, and in Law, where it doth not arise from, or is made by the express Agreement of the parties, but it is made by the Act, and operation of Law; as where an Hostler gives my Horse meat; or a Taylor makes my garment, that they should bee paid for it. The kinds of Contracts. Real, Personal. Expresse. Implied.

It is also Absolute, and without reference to another things; As where I agree to give a man 10 l. for his Horse. Or it is Conditional, and with reference to something else: As where I agree to give a man Absolute. Condition.

10 l. for a Horse, if J. S. shall say, it is worth so much. Plow. 130. 140. 338.

By word of mouth.

Sometimes it is by word of mouth onely, and sometimes it is in writing; and if it bee in a writing not sealed and delivered, then it is all one with the Contract made by word of mouth: But if it shall be put in a Writing sealed and delivered as a Deed, then it is under another Consideration, and may in many cases differ from a Parol-Contract, which is that Contract onely that wee must speak to in this place. Plow. 130. 140. 338.

In Writing.

Quid pro quo. What.

Some Contracts also are clad with a consideration, and have Quid pro quo in them (that is to say) where there is something in the Agreement that is a Recompence in Deed, or in Law, and is the material cause of the Engagement, by which it is made obligatory. And so it is where it is executed with a Recompence; or is so certain, that it gives an Action, or other Remedy for the Recompence; as where you sell mee your Horse for ten pound laid down, and received: Or where I agree, you shall have my Horse for ten pound. And for this, you promise to pay mee this ten pound for my Horse: Or I covenant by a Parol-Agreement to make you a lease of the Mannor of Dale for three years for twenty pound laid down in hand, and received by mee, or promised by you to bee paid to mee. And such a Covenant or Agreement is deemed to bee, An Agreement with a lawful cause or consideration in it.

Consideration.

Without consideration. *Nudum pactum.* What.

And some of them again are alone, and without any consideration in them. And then if it bee by word onely, and without writing; or by writing not sealed and delivered, and turned into a Deed, then it is said to bee but Nudum pactum ex quo non oritur Actio. Nudum pactum is where there is an agreement or promise to do a thing, and no recompence, or consideration given, or promised for, or in lieu of it. As where one sells mee a Horse, and upon the Contract hee is to have nothing for his Horse; Or one shall promise to give mee a Horse, build mee a House, or do any other such like thing by a day, and I neither give him any thing, nor promise any thing for it. And so where one promises mee twenty shillings, or that hee will bee my Debtor for twenty shillings, and there is nothing to induce it, that hee shall do something for mee, or the like; but if there be any thing to bee done, or given by mee, though never so small a matter, as a penny, or pennyes-worth, or a pint of wine to induce the promise, it may bee good; otherwise not, but is called a Naked Promise, and void in Law, and no Action will lye upon it. Plow. 130. 140. 308. Dyer 30. 336.

With warranty and what.

Some Contracts also are made with a Warranty included within them. And this Warranty is said to bee a Covenant whereby the Bargainer is bound to something about the thing sold; and so it hath respect sometimes to the property, and sometimes to the quality of the thing sold. And some Contracts are naked, and without any warranty annexed to them. Plow. 130.

Executory.

Some Contracts are said to bee Executory onely; as where all, or part of the thing agreed upon is to come; as that you shall build mee a house, or that if you bring mee in so much Corn by such a day, that I shall pay you so much mony, and the like. Finches Ley. 45 1. Dyer 336. Dyer 36. 14 H. 8. 19. Or it is executed, as where one promises and payes mee ten pound in recompence of a house I have built for him at his request, and the like. Plow. 130. 140. 308.

Executed.

Assumpsit. What. Part 2.

And every Executory Contract is said to imply in it an Assumpsit, the which, strictly and properly, is nothing else but a special kind of Agreement, or a voluntary promise made by word of mouth, or by a writing

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not sealed and delivered as a Deed, by which a man doth assume, or take upon him to do, or to pay any thing to another. But more largely it is taken for, and applyable to Agreements by Deed in writing, as well as Agreements by word of mouth. Plow. 130. 140. 133.

If the Contract bee by word onely, then there are two considerable parts in it. Consideration What. How.

The first is the Consideration of the Promise, which is said to bee a cause or occasion meritorious, requiring mutual Recompence in Deed, or in Law: Or the material cause of the Contract, without the which the same is not binding.

2. The Promise it self. But in case of a Contract in writing, that by the sealing and delivery of it becomes a Deed; there the Consideration is not at all material. 2 H. 7. 11. 21 H. 6. 55. Dyer 336.

The Consideration of an Assumpsit is said to bee 1. Either Express, as where I promise that if you marry my Daughter, I will give you ten pound; or where one doth promise to another, that if hee will build him a house, to pay him so much money, make a Lease, seal a Bond, or the like, that hee will do another thing. And in these cases the Promise must bee set forth in the Count with the Consideration. Or it is implied, that is, where the Law it self doth imply, and enforce the Consideration, or Promise on either side. As where I retain one to do work for mee, the Law makes up a promise of payment for the work when it is done. So where two agree to refer differences between them to the Arbitrement of I. S. Or they make a bare submission without any promise to stand to the award of I. S. the Law will supply the promise. And hee that comes to an Inne, and calls for any thing there for his entertainment, the Law makes a promise that hee shall pay for it. And in every Executory Contract there is said to bee an Assumpsit implied. Coo. 5. 19. and 4. 94, 95. Plow. 308. Consideration Express, Implied. Count.

The Assumpsit also (like to the general Agreement or Contract) is said to bee Absolute, or Conditional, Real, or Personal, with, or without consideration; with consideration, and so valuable and actionable; or it is without consideration, and so void. As where I promise to a man for ten pound paid to mee in hand, that I will build him a house, &c. this is good. But if I promise a man ten pound, because hee is my kinsman; or the like, this is void, and no Action will lye upon it. Doct. and Stud. chap. 24. Plow. 308, 309. So that there is an expresse, and an implied consideration, and an express, and an implied promise also in these Contracts. The expresse Consideration is, where any thing is expressly given, done, or promised to draw forth the promise; and the implied consideration, which is where the Law makes it up without any express words in the Agreement. And the express promise in a Contract is that which is mentioned in it between the parties. The implied promise is that which is made by the Law. As where a man hath done work for mee by mine appointment, that hee shall bee paid as much as hee deserves for it; this hee is as much bound unto, as if hee had actually promised to do it. Doct. and Stud. 104. Consideration void. *Nudum pactum.*

Sect. 2.

Some general things about Actions upon the Case, grounded upon a Contract or Assumpsit.

1. To make a good Contract to alter the property of a thing in the sale thereof; four things are requisite. Part 1.

Property altered by a Contract.

1. That the party selling have an ownership in the thing, or a power from the right owner to sell it; or else that the thing bee truly, and without Covin sold in a market overt, if it bee saleable there.

2. That if it bee out of the last mentioned case, that there bee in the Agreement a good consideration, or some meritorious thing to move it.

3. That the agreement and contract it self bee certain, perfected, and compleat.

4. That it bee lawful to bee done.

Contract good without writing, or ceremony.

2. That a contract for goods, or cattel, may bee made as well by word of mouth, as by Deed in writing; and by word of mouth without any solemnity or ceremony. So that if one bargain, and sell his goods for money, hee may do this without Deed, Inrollment, or any such like matter; and without the delivery of any part of the thing sold, or any peece of money in the name of Seisin.

3. That if the contract bee in and by a writing sealed and delibered, and so turned into a Deed, as a Lease, Obligation, or the like; in this case this Action generally will not lye upon it; but some other Action. And yet if one promise for good cause to make mee a Feoffment of Land before such a day, and hee doth it not till after the day; I may perhaps have an Action upon the Case for this breach of promise.

Assumpsit.

4. That in every contract wherein there is an Assumpsit, there are, and must bee two things considerable; the consideration of the Promise, and the Promise it self. But if the contract bee made by a Deed in writing, there the consideration is not at all material. Dyer 29. 30. 14 H. 8. 19. 9 H. 7. 21. 21 H. 7. 6.

5. That an Assumpsit may bee made for others, or to others in their absence, and this may binde them. 27 H. 8. 24.

Implicit Assumpsit.

Mutual Assumpsits.

6. That in every contract that is in any part of it executory, there is an implicit Assumpsit, upon which this Action may bee raised; As where part of the consideration is to bee performed; or mony is paid for the thing sold; but the same, or some part thereof is not delivered, or the like; for when one agreeth to pay mony, or to deliver any thing, hee doth thereby promise to pay it, or deliver it. And therefore where one selleth any goods to another, and agreeth to deliver them at a day to come. And the other in consideration thereof promiseth to pay so much mony to the other; in this case both parties may have an Action of Debt, or an Action upon the Case upon Assumpsit, for the mutual executory Agreement of both parties, importeth in it self reciprocal Action upon the Case, as well as Action of Debt. Coo. 4. 94. Plow. 128.

7. That every contract that is made, before it can yeeld an Action, it must bee compleatly finished and perfected, not onely in the minds, but by the words of the parties therein interessed and ingaged.

8. A contract, as it must be made up and compleat, so it must bee duly pursued and performed in both the parts of it. Yelverton 87.

9. That if the contract bee in a material part of it altogether incertain and insensible, then it seems the whole contract will bee void. Stiles Rep. 63. 281. 264.

About the considerations of the Promise. Part 2.

As touching the consideration part of an Assumpsit onely, and by it self, these things are to bee known.

1. That the consideration is sometimes raised by the Law, when there is none at all expressed in the Agreement.

2. That the consideration that shall bee said to bee valuable and good to raise an Action upon it, the same must import some gain to him that makes it, or to some other at his request; or some loss to him to whom it

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is made, or both. And if there bee in it matter of losse, labour, or danger to him to whom the promise is made, it matters not whether there bee any matter of gain at all to him that makes the promise. Croo. 1. 194. Hobb. pl. 6. Godb. Rep. 290. Croo. 1. last publisht 137, 138. And yet in a special case the godnesse of the work done may supply the consideration, and make the party chargeable.

3. That the value and proportion of this consideration is not considerable; for a penny is as much obliging in a promise as 100 l. But there it is probable the Jury will give damage according to the losse.

4. That where the consideration doth import many things to be done, and some of them bee frivolous and void, yet if any of them bee good, and have a valuable consideration in it; this will make the Contract good. Croo. 1. last publisht 149. And yet if a Non-Assumpsit bee pleaded to the charge of such a promise; both parts of the consideration must bee proved, or the Action will fail. Croo. 1. last publisht 759.

5. That the promise that is made upon a good consideration is, as if it were made upon a condition precedent. Hobb. Rep. pl. 6.

6. That if a promise bee set forth to bee made in consideration of one thing, and in truth it was made in consideration of that thing, and of another; this will not bee good. Croo. 1. last publisht 79.

7. That where that (which in the matter of it) may bee good in a promise, may also bee good in the consideration of a promise. Brownl. Rep. 1. part 41. 2. part 274. 279.

8. That one promise may bee a good consideration for another promise, so as they bee made together at the same time; otherwise not. Croo. 1. last publisht 147, 148.

9. That if the Contract bee made by writing, or by writing sealed, and not delivered and made a Deed, or by word of mouth, there must bee a consideration in it, and for any Assumpsit that is in it, otherwise no Action will lye upon it. But if the Contract bee made by Deed, sealed and delivered, the consideration will not bee material at all. Fitz. Debt 126. Broo. Action 40.

10. That the consideration that must make good, and uphold such a Contract to the maintenance of such an Action as this is, must be valuable, lawful, and possible, and it must bee present, or to come; for if there be either no consideration, or the consideration be of no value, or impossible, or unlawful, or if otherwise, and it bee gone and past; this will not make the promise binding, or actionable. And therefore a meer voluntary courtesie will not bee a consideration to uphold an Assumpsit. And the consideration, as it must bee thus laid in the foundation of it, so must it bee exactly pursued and observed in the execution of it. Trin. 4. Jac. B. R. Cranfield and Green, Yelverton 87. Consideration valuable.

11. That if there bee two or three considerations set forth of a promise, and one of them is good and sufficient, and well alledged and set forth in the declaration. Albeit the rest bee not good for the matter, as being repugnant, unlawful, &c. or in the manner, when it is not well set forth in pleading; this will do well enough, and the Plaintiff shall recover. But if two or three things bee laid as the considerations of a promise, and one of them is found false; in this case the Action will miscarry. Croo. 1. last publisht 484. Croo. 2. 128. Popham. 32.

12. That the consideration that the Law looks upon as good and valuable, is such as hath something in it, present, or to come; or hath something of both in it, and is not past. For if the motive or inducement

of it bee past, generally it is not good, nor binding at all.

Consideration past.

And yet a consideration past before the promise made, may bee a good consideration to an Assumpsit in the cases following.

1. Where that which is past, and that which is promised, to come, do make but one entire act, and have dependance the one upon the other. As where I have sold Land for money, and after in consideration thereof, and without other cause promise to make an estate, or an assurance of it: this is good. Croo. 1. last publisht 138. And where that which is to be done is but in pursuance of that which is done, and ought in reason and conscience to bee done; as when one hath done a work for mee, or hath served mee a time, and is not paid his wages, and now I promise him, in consideration of this, to pay him so much. Croo. 1. last publisht 42. 194. And where the party promising is as much bound to the thing before, as hee is after his promise; As where one is indebted to mee before, and in consideration thereof promise to pay it to mee. And where the thing that is done, is done by the procurement of him that makes the promise, and hee in reason and conscience is bound to do it: As where I have perswaded a man to engage for mee, or a friend of mine, and after I promise him in consideration thereof to save him harmless from it, &c. Croo. 1. last publisht 282. 295. Doct. & St. 104. 8. Siles Regist. 31. And where the first cause continueth, as a Marriage, natural affection, and the advancement of the party, and the like: As where I promise to one twenty pound, in consideration that hee hath married my Daughter. Croo. 1. last publisht 59.

And where the first Act is a kindness obliging him that promiseth, as that the party to whom the promise is made, had at the request of another granted to him the next avoidance of a Church. Croo. 1. last publisht 295.

About the Promise it self. Part 3.

As to the Promise it self, and this part of the Contract alone, these things are to bee known.

1. That the Promise it self as it is, not lesse nor more, is to bee performed. Croo. 2. 235.

2. That the Promise in the Contract is sometimes implied, and not expresse.

3. This must bee certain, lawful, and possible also, or it will not bee good.

So that the summe of the whole Law, as to this point of Assumpsits and Promises, seems to bee made up in these things that follow. That to the making up of every good Assumpsit, whereupon this Action may bee grounded, these things are requisite,

1. The Agreement on both sides must bee perfectly made and finished, and nothing left to bee done therein.

2. This Agreement must bee in the words spoken about it sensible and certain, so that what is meant by the parties thereby may bee known.

Consideration lawful, possible.

3. The things agreed to bee done on either side, both by him that makes, and by him that takes the promise, and in the consideration, and in the promise both, they must all of them bee such as are lawful, and possible to bee done.

Consideration valuable.

4. The consideration, or motive of the promise, must have something in it that soundeth to the benefit of the Defendant, or some friend of his, for whom hee doth interpose; or to the charge of the Plaintiff, or must (at the least) have some probability or possibility of it, for which hee laboureth and hath prejudice. Croo. 1. last publisht 120, 194. 283. 380.

But

But for the proportion, if it bee never so little, either of the gain, or value on the one side, as a penny, or pinte of Wine, or the like thing, either given, or so promised, then the other may recover it by Law upon the promise, if hee will; or of the pains or work on the other side. For if the consideration bee to forbear a Suit but for one week, or lend mee a Dogg, or to shew forth a Deed, or any such like small matter; this may bee sufficient to make up such a consideration, as shall make the Assumpsit actionable. Croo. 1. last publisht 94 98. 123.125.194.138.

5. This benefit or charge that induceth the promise, must bee present, or to come, and that for which hee hath a remedy, for if it bee past, it is no good consideration, except it bee in the special cases before named. Sect. 2 part 1. of this chapter. And if some, or one of these things bee not in the Case, but that the thing which drew out the promise is quite past and gone before; then is the promise of no strength. Croo. 1. last publisht 132,133,137,138.

6. If any thing bee to bee done by him, to whom the promise is made, to make way for the promise; all this must bee pursued and performed by him, ere hee can expect the performance of the promise. Croo. 1. last publisht 133.

7. The promise it self is to do a thing lawful and possible; for if it be otherwise, hee that makes it, is not bound to perform it.

8. That if any thing bee to precede the doing of any part of what was to be done, as a Notice, Request, or Demand; this must first be done, and set forth in the declaration. Croo. 1. last publisht 91. 133. Notice. Request. Demand.

Sect. 3.

What shall bee said such an Agreement, that hath an Implied Assumpsit in it, supplied by the Law, upon which this Action may arise, or not.

It hath bèen laid down as a Rule, That every Contract made betwixt parties doth in Law imply in it self a promise, that they will perform the Contract. Hill. 1649. Stiles Regist. 31. 75. Part 1.

And that where one doth become legally indebted to another, the Law creates a promise that hee will pay this debt; and if hee do not pay it, there is a sufficient ground for the partie, to whom hee is indebted to bring his Action of Indebitatus Assumpsit against him, to recover the debt. Trin. 24. Car. 1. B. R. Stiles Regist. 32.

If one intreat mée to bee bound for him, there is in this (as it is said) an Implicite Assumpsit, that hée shall save mee harmless; and therefore if I bee molested for it, I may have this Action. Per Justice Richardson, 2 Car. 1. at Northampton Assizes. To save harmless from a bond.

If an Hostler give my Horse meat, or a Taylor make my garment, hee may have this Action for the meat, or for the work, upon this Implicite Assumpsit. And the one may kèep the Garment, the other the Horse, till hee bée paid; or if they deliver the thing, they may have this Action, or an Action of Debt at their election for the money. So if I come into an Inne, and call for provision, in this case the Law makes up this Assumpsit, upon which the Inne-keeper may have either this Action, or an Action of Debt at his choice. Finches Law 180. Croo. Rep. 2. 626. Hostler for Horse-meat. Taylor for making a garment. Inne keeper.

So where a Debt is due to mee on a Contract, it seems the Law makes for mee a promise to pay it, if I will make use of it. See Croo. 1. Debt.

250.

250. And yet bee well advised herein, if you bring an Action upon the General and Implicite Promise, where no expresse Assumpsit is in the Case. Croo. 1. 299.

Upon a delivery of goods.

If one deliver mee any thing but mony, to deliver over to another, or to the use of another, or to bee imployed to any other purpose, or upon condition, that if hee do such a thing, that hee shall keep them. In these and all such like cases, some think there is an Assumpsit implied, upon which this Action will lye in case of breach of the Trust. Dyer 21, 22, &c. So where one doth receive mony to my use, or to deliver over to mee, or enter into my Lands, and take the profits thereof; and being required to pay, or answer the profits to mee, hee refuse it; some say I may have this Action, as well as an Account for my remedy.

Breach of trust.

Trover and Conversion.

So where one findeth my goods, hee is chargeable to mee for them, by reason of his possession, by the Law in this Action, upon the Implicite Assumpsit. See chap. 8, and 9. throughout.

Upon an Account.

If two account together, and thereupon the one of them is found indebted to the other, it seems the Law supplies a promise in this; and that hee to whom it is due, may have this Action without any promise, and suppose a promise to pay it. Hobb. Rep. pl. 117.

For work done.

If one bid mee do work for him, and do not promise any thing for it; in this case the Law supplieth the promise, and I may sue for the wages, and set forth in my declaration, that I deserved so much for the doing of it. Trin. 8. Car. 1.

Count.

Contract. Executory.

Every Executory Contract is said to import in it an Assumpsit in Law; and one may have Debt, or Action upon the Case upon it at his election. For when one doth agree to pay mony, or to deliver any thing, thereby hee promiseth to pay or deliver it. And therefore when one selleth any goods to another, and agreeth to deliver them at a day to come; and the other in consideration thereof promiseth to pay so much mony to the other; in this case both parties may have an Action of Debt, or an Action upon the Case upon Assumpsit at his choice; for the mutual Executory Agreement of both parties importeth in it self reciprocal Action upon the Case, as well as Action of Debt. Plow. 128. Coo. 4. 94. 9. 87. And in this Action the Plaintiff shall not onely recover damages for his special losse, if any bee, but hee shall recover the whole Debt. And a Recovery or Barre in this Action shall bee a good Barre in an Action of Debt, for the same cause. And so a Recovery or Barre in an Action of Debt, shall bee a Barre to an Action of the Case for the same thing. 12 Ed. 4. 13. 2 R. 3. 14 Broo. Action, &c. 105. Coo. 9. 87. 4. 94.

Reciprocal Promises. Debt. Damages.

Barre to this Action.

Upon a submission to an Award. Part 2.

If two refer matters in difference between them to Arbitrators to end it, albeit they do make no promises each to other, to abide and perform their Award, yet the Law doth supply this, and make up this by Implication: and each of them may have this Action against the other, for not performing it; upon this bare submission to an Award without any expresse promise. Adjudged Neales Case Mich. 37. 38 Eliz. B. R. Mich. 22 Car. B. R. Stiles Reg. 7. and in Trin. 18 Jac. B. R. Brooms Case. Coo. 5. 77. No. lib. Intr. 3. B. sect. 4. Croo. 1. 280. Croo. 1. last publisht 24.

Hostler.

If a man bring his Horse to an Inne, and there leave him without agreement what to pay, the Hostler may keep him till hee hath his mony; and when hee hath kept him so long as hee hath as much as hee is worth, hee may have him praised and sell him, and pay himself with the mony. [illegible] where it is agreed what hee shall have for keeping, and there is a promise.

promise, there hee cannot so do, but must sue for his money; or the owner take him away without payment, he is to sue upon the Assumpsit in Law. Yelverton 66, 67.

If I bee a Carrier, and one put Goods into my hands to carry; or a Taylor, and one put Cloaths to mee to make. Or a Smith, and he put his Horse to mee to bee shoed, and I do the work; hee is bound by Law to pay mee for my work, as much as I deserve, though hee never made mee any promise for it, and this is supplied by Law, and recoverable in this Action. Croo. 2. 263. And the Taylor may keep the Cloaths hee makes, till hee bee paid for them; but hee cannot sell them, and pay himself. And if there bee a promise to the Taylor what hee shall have, hee must sue for this; or if the owner take them away without payment, the Taylor may have his Action upon the Assumpsit in Law, and have as much as hee deserves. Yelverton 66, 67. Carrier. Taylor. Smith.

An Executor, or Administrator, cannot bee charged in an account for any Receipt, or occupation by the deceased; nor in Debt upon the Contract of the deceased. But it is thought this Action upon the Case in the first, and it is clear it will lye in the last Case upon the Implicite Contract. And therefore if one receive my money to account, and hee and I cast it up, and agree in certain what is due, and then hee dye; in this case it seems I may have this Action against the Executor, or Administrator, for what was cast up, and agreed; albeit I cannot have an account. Coo. 4. and 8. 94. 133. And Hill 13 Jac. per Chief Justice. And so adjudged. For by an Account between the parties, that which was before is made certain, and upon this an Assumpsit will lye upon the consideration in Law, Yelverton 70. So upon an Indebitatus existit, Goldsb. and Brownl. 14. Stiles Rep. 214. But if the former Debt bee in the Realty, as for a Rent, or the like, there it will not arise, but upon some collateral cause, as forbearance, and a new promise, &c. Against an Executor or Administrator. Upon an *Assumul computasset*. Upon an *Indebitatus*.

Idem, If I sell to another Cloaths, for 370 l. one moyety thereof to bee paid within fourteen daies, and the other moyety to be paid at the end of three months: it seems there is in this an implied promise to pay those summs at that day. Croo. 2. 544.

If one in consideration that I will forbear to sue I. S. for such a Debt, promise to pay mee the Debt: it is said, this shall bee intended a total and absolute forbearance. And that there is in it an implied promise in him to whom it is made, that hee shall forbear his Suit totally. Croo. 2. 683. 397.

Every Executory Contract, and every Debt that is not upon a Record, or upon a Specialty, or for Rent upon a Lease, which may bee turned into damage; as upon an account, or upon a buying, or upon an agreement, hath this Implicite Promise in it; and the Plaintiff may say that the Defendant did promise it, and make the Debt, or first cause the consideration of it. Upon an Executory Contract.

Sect. 4.

What shall be said a good, Express, Entire Contract, Covenant, Agreement, or Assumpsit, upon which this Action of the Case may be grounded; or not.

Contracts and Assumpsits are to bee considered altogether, or asunder, and in the parts thereof. And being considered together, and as one entire thing, there must bee in every good Contract and Assumpsit these things. Part 1.

1. There must bee persons able to contract.
2. The Contract must be perfect and consummate.
3. There must bee some good consideration in it to induce the promise and undertaking.
4. There must bee a certainty in the Agreement, and the Contract must bee made in such words, whereby the minds of the parties in it may bee known.
5. The Agreement must co here within it self.
6. It must bee lawful, both in the Consideration, and in the Promise.
7. And it must bee weighty and serious. And therefore the Law looks upon Contracts and Assumpsits, made by persons disabled by Law to contract and promise, imperfect and not finished: Without any valuable consideration, unlawful, impossible, incertain, insensible, and doubtful, repugnant, vain and frivolous, as void, and doth not allow of any Action to bee brought upon them. And if the Contract bee about any thing to be sold, to make an alteration of property, there is this also to bee looked upon. If the seller have an Ownership in the thing sold, or a power to sell it; or else that it bee truly, and without Covin sold in a market overt. Coo. 5. 83. Plow. 504.

In the parts of a Contract, these things therefore are especially to bee considered.

1. What the persons are by, to, and between whom it is made.
2. In whom the thing sold, if it be about a sale, and the property of it is, about which the Contract is made.
3. Whether it bee consummate and perfected.
4. Whether there bee any consideration in it, and whether that bee a good consideration, or not.
5. The manner and frame of the words of the Contract and Assumpsit.
6. The matter of the promise, or the thing it self undertaken; Whether it bee 1. Lawful. 2. Possible. 3. Sensible and certain. 4. Agreeing within it self. And 5. Serious and weighty.

The Persons.

1. For the persons by, to, and between whom it is to bee made. And where one shall charge, or bee charged by the Contract of another.

Part 1.

As touching the persons contracting: this is to bee known.

1. That the persons contracting, must bee persons able to make such a Contract, and not disabled by Law to make it, as Infants, Women that have Husbands, and the like. And yet generally Promises made to them are good.

Traitor, or Felon.

2. A Traitor, or Felon may at any time after his offence, and before his Conviction, sell any of his goods to maintain himself, and as to this have this Action, as another man may have. And so happily hee may bee charged by this Action as another man. Coo. 8. -- 95. 171.

Ideot.

3. An Ideot made so of God, till hee bee seized or committed by the King after his Title is found by office, may (as it seems) sue and be sued in this Action, upon any such Contract or Assumpsit, by a Guardian, Attorney, or some other way. See Coo. 4. 125.

4. A Contract to another may bee of advantage to mee. Hetleys Rep. 176.

Assumpsit, by, or to the husband and wife, or either of them.

The Assumpsit of a Woman that hath a Husband, regularly doth not binde the Husband, yet a promise made to such a woman is good, as a promise made to a man is good, so as there bee a good consideration in it. Huttons Rep. 105.

The Husband and Wife may joyn in a Suit upon an Assumpsit to the Wife.

wife, dum sola fuit. Hill. 9. Jac. B. R. Wolverton and Day. Croo. 2. 64.

If one promise to a feme Covert, that if shee will procure her husband to levy a Fine of such Land, hee will give her a Riding Suit; In this case for breach of the promise, they must joyn in the Action. So if a promise bee made to the husband to pay a Legacy given to his wife. Adjudg. Stiles Rep. 297. Cotrell and Theobalds. B. R.

If one promise to give my wife twenty pound, wee must both joyn in an Action for the Recovery of this mony. Bulstr. 1. 122.

One bound by the Contract of another.

A promise, if good, made to the wife, is all one as if it were made to the husband: And therefore if one say to my wife, that if I will let out A. who is in prison on an Execution for my debt, that if A. pay it not to mee such a day, hee will pay it, I alone may sue him for this. 27 H. 8. 24.

The husband alone may sue upon an Assumpsit made to the wife, and declare as upon an Assumpsit made to himself, or they may sue together. Croo. 1. last publisht 61. 27 H. 8. 24, 25. Noy. 19. The Assumpsit of the wife for necessary apparel will not binde the husband. Hurrons Rep. 105.

Contract for Sale of goods, or not.

The husband is in many cases chargeable in this Action upon a Contract made with his wife, and so hee may bee charged upon the Contract for a thing bought and sold, or any incident to it, as upon his own Contract. And therefore if shee sell her husbands goods, by authority precedent from him, or by his consent subsequent; or where hee doth not disagree to it during his life, in the two first cases clearly the Contract is good. 27 H. 8. 25. So if the wife buy any thing by authority general, or special, from the husband, or without authority, if it be for her necessary apparel, the husband will be chargeable herewith. Dyer 234 Hurtons Rep. 105. So where the wife doth use to buy and sell, and manage the estate of the husband without him, or the things sold bee such as are proper to a wife to sell, as Eggs, Butter, Cheese, &c. there her Contracts will binde him. But if shee buy any thing for her husband, or to his use, without authority general, or special from him, this Contract will not binde him, albeit the thing bought be spent in his house. And yet if hee agree to it after the buying, it will binde him. And in such Contracts made by the wife, the husband may declare as upon a Contract made to himself, and this Action will lye as it will upon Contracts made with himself. But Collateral promises as warranty, and the like, to such Contracts annexed, will not binde the husband without his special Agreement. 21 H. 7. 40. 20 H. 6. 22. old N. B. 62. 27 H. 8. 25.

By a feme Covert.

Warranty.

An Infant under 21 years old, though but a day, will not bee bound by any Contract or Assumpsit of his, though it bee made never so much in his own advantage: And therefore this Action will not lye against him upon any such Contract or Assumpsit. And yet his Contract for necessary meat, drink, and apparel, physick, schooling, and the like necessaries, is as good and binding as another mans Contract is; and so hee is chargeable himself, and his Executor after him. Noys Rep. 87. Popham 151. To a Taylor, for making Cloaths for him. Noys Rep. 85. To a Brewer, for Beer for him. Noys Rep. 85. And the Judges, not a Jury are to judge what shall bee said necessary. Brownl. page 168. Croo. 2. 494. 560. Leonard Rep. 214. Bulstr. 1. part 38. Coo. 9. 87. Plow. 264. 10 H. 6. 14. Coo. upon Lit. 172. 18 Ed. 4. 2. Hobb. Rep. 96. And yet if after this the seller and hee come to account, and bring what he had of him to a certainty, hee may not sue upon this account stated. Trin. 24. Car. B. R. Stiles Regist. 184.

Assumpsits by or to an Infant, and his Contract.

And some say, if hee buy a horse, and hee give earnest, and the seller break with him, hee may have this Action against the seller, but shall recover small damage; for the seller could not have recovered the money agreed upon between them, if hee had delivered his horse; and the Infant may bring an Action of Account for his earnest money again. It is not safe therefore to make any Contract with an Infant; for some say, if hee sell a horse, or goods, and deliver it with his own hands, that this Contract is not void, but voidable onely. 26 H. 8. 2. 22 H. 7. 39. 2 Ed. 4. 2. If hee buy wares in a way of Trade, and get by it, yet this will not binde him. Croo. 2. 494.

Account.

By a Servant for the Master.

The Master is in many cases chargeable in this Action, upon the Contract of his Servant. And for this wee are to know, That the Contract of a Servant in buying and selling will binde the Master, and make him chargeable for the things bought, in these cases,

1. Where the Servant is a known, and a common Baylift to his Master, and hee doth use to buy for him, and hee doth mention his Master in the bargain, and doth buy for him.

Contract good.

2. Where the Master doth give a precedent authority to him so to do, and hee doth mention his Masters name in the bargain, and buy for him, albeit the Master never have the thing bought, and in these cases the Contract is good, albeit the Master have no notice of it, and any friend may bee a Servant in the last Cases. For if any Servant be made by my appointment buy any goods for mee, or to my use, by this the property of them is in mee; and this shall bee said my buying, and I must have them. Trin. 9. Jac. B. R. Moores Case.

3. Where the thing bought doth come to the Masters use, and he doth assent to it: But if it do come to the Masters use, and hee doth not agree to it, Contra, especially if the things bee unnecessary.

4. Where hee doth after the buying agree to it, though it come not to his use; for a subsequent agreement is equivalent to a precedent authority, and the seller may have an Action of debt, or this Action as the case is against the Master. And if the servant do make any special promise to pay the money, hee may have an Action of the Case against the Servant. Fitz. 20. 27. 27. Ass. 5. Plow. 18. F. N. B. 82. Doct. and Stud. 137. Dyer 230. 237. F.N.B. 118. G. 11 H. 6. 26. 21 H. 7. 40. And some think these Contracts to bee good, although hee never use his Masters name in them. But in other Cases the Contract is void as to the Master, and will not binde him.

If my Servant by my commaund sell my horse, the money is to be paid to mee. Hetley 176. So in selling of the Masters goods, or cattle, the Contract of the Servant will binde the Master in these Cases,

1. Where the Servant hath a precedent authority generall, or speciall, from the Master to sell the thing. And here it will binde, albeit the Master have not notice of it, and receive not the money of his Servant. But if the Servant give away his goods, contra.

2. Where the Master, after notice of the sale, doth agree to it.

3. Where the Servant is a common and known Baylift, and doth use to buy and sell for his Master. And if such a Servant shall sell, or pledge his Masters horse, or exchange his Oxe for Wheat, that cometh to his Masters use, this is good, and the party that hath contracted with him need not to averre that hee had authority from his Master. And in all these, and such like Cases, the Master may suppose the Contract to be made unto himself, and sue in his own name for the money. Qui per alterum facit per seipsum facit. Dyer 236. Noys Rep. 110. Finchesley. 66. Croo. Contract 24.

Averment.

If therefore I send my Servant to a Market, or Fair, to buy any thing for me, and do not tell him of whom he shall buy it; in this case, of whomsoever he buy it I shall be chargeable. But if I bid him buy it of one man, and he buy it of another, I shall not bee chargeable for this. Doct. and Stud. 137. So if I bid another deliver to my Servant what he shall call for, and I will pay him; in this case I shall be chargeable for whatsoever my Servant doth fetch. Coo. 8. 146.

And therefore upon all these Cases, where this Action of the Case will lye upon the Contract made with me, it may lye upon the Contract made with my Servant for me, or to my use.

But for any thing Collateral to the Bargain, my Servants Contract shall not bind me. And therefore where he hath authority to sell my goods, and he doth sell them, and warrant the goods, the sale will binde me. But the warranty will not binde me. 11 Ed. 4. 7. Warranty.

But a Taverners, or Brewers Servant, or a Packer, Baylift, or Shepherd, that hath the custody of his Masters goods, shall give them a way, this will not binde the Master: but he may sue him, that shall meddle with the goods, for them. Noy 110. Brob. Donc. 56. Breach of trust.

If a Servant make a Bill, confessing that he had bought Ware to the use of his Master; and this without sale, and by this he doth oblige himself to pay the debt; In this case this Action, but not an Action of Debt will lye against the Servant, for it is his Assumpsit, but his Masters debt. Dyer 280. Debt.

But Contracts made by, or, with a stranger for mee, or to my use, it is said, shall not binde mee as in the Cases before. And therefore if there be Mother, Son, and Daughter, and the Mother having a Jointure on her Sons Land, the Son in consideration that his Mother doth surrender, doth assume with her to pay the Daughter a hundred pounds at a day; in this case the Daughter cannot bring this Action against the Son, for this mony at Law. But happily in a Court of Equity shee may recover it. Trin. 18 Jac. B. R. Adjudged. And yet it is said down as a Rule, That any one, to whose use, or for whose benefit a Contract is made, may have an Action upon the breach of the promise, although the promise were not made to him, but to another. Pasche 23. Car. 1. B.R. Selles Regist. 32. Assumpsit to, or by another to my use. Part 3.

If one in consideration that I have paid him ten pounds, assume to a stranger to assure mee an Acre of Land; no Action will lye for mee upon this promise at Common Law. But in a Court of Equity I may perhaps have relief for it. Pasche 9 Jac. B. R. Jolleys Case by three Judges. And yet if I sue out a Latitat against one that owes mee mony, and use I. S. to follow it, and hee gets a Warrant to the Sheriff to arrest him; and thereupon the party promise him if hee will forbear it, he will appear at the day of the Writ, or pay mee my mony, hee cannot sue him upon this, but happily I may, but I must lay the promise as it is made to him. Croo. 1. part last publishe. 369.

If A. bee indebted to B. and a stranger follows the Suit for B. and A. comes to the stranger, and says to him, forbear your Suit, and I will pay your Master; the Master may have an Action upon this, and hee may sling the Action. Heel. 4. Rep. 148.

If I agree with another that B. my Son and Heir shall marry Constance his kinswoman, and in consideration of that I agree to assure Constance Land of ten pounds a year for her Jointure, hee answers to me to give to my Son in marriage with the said Constance two hundred pounds this is good, and it seems the Son, and not the Father is to sling the Action

Action if there be cause. Croo. 1. last publisht 620. Hetleys Rep. 176.

If A. be indebted to B. and a stranger follows the Suit for B. A. comes to the stranger, and sayes to him, leave the Suit, and I will pay your Master, the Master must bring the Action. Hetleys Rep. 176.

The Contract between Parishioners, and the Parson, about increase of Tithe, will not binde as to the successor after the Parsons death; but the Contract will dye with him. March. Rep. 87.

By, or to the Father, for the Son.

If one in consideration that I will consent that my Son shall marry his Daughter, and that after upon his request, I will make a Joynture of twenty pound a year to the Daughter, assume to give two hundred pound to the Son in Marriage; the Action for this two hundred pound it seems must be brought by the Son. Hetleys Rep. 176.

If I and another man be speaking together, about a Marriage between his Daughter, and my Son; and in our conference hee doth use these words, I shall give him one hundred pounds that shall marry my Daughter with my consent, and after my Son marry her, with his consent, hee may not have this Action upon this speech. Pasche 3 Jac. B. R. Goldsmith and Wefton.

It hath been said, that it was adjudged, that where two Fathers promise upon Marriage, between the Daughter of the one, that the Father of the Son will give a hundred pound in stock, and the Father of the Daughter a hundred pound in mony, the mony was paid, and the stock not delivered, that the Action was maintained by the Father. But the Judges doubted at this Case. Hetleys Rep. 176.

If there bee debate between mee and my Son, and I. S. and hee hath beaten mee, &c. and assaulted my Son, and I have sworn the peace, and am prosecuting him before Justices of the Peace; and the Father of I. S. in consideration that I and my Son will desist our complaint, and that his Son bee no further vexed for that cause by us assumes, that his Son shall keep the Peace towards mee, and W. R. my Son, and I do desist, &c. and the said I. S. doth break the Peace upon my Son, &c. and wound him, and I am at charge to cure him; in this case the Action will not lye on this promise for mee as it seems, albeit I was at charge to cure him; but for my Son, it will lye, and against the Father of I. S. upon his promise for his Son. And if in this case a meer stranger had made this promise upon this consideration in behalf of the Son of I. S. it had been good. Croo. 1. last publisht 849. 881.

If one promise to the Father, to give a hundred pound to his Son in Marriage with the Defendants Daughter, in consideration of a Joynture assured by the Plaintiff, the Action being brought by the Father for Non-payment of the hundred pound to the Son; it is said to be adjudged not to be maintainable by the Father. Lever and Haws. Hill 41. Croo. 1. last publisht 849.

If A. S. assume to my Father upon a Marriage to bee had between mee and his Daughter to pay mee forty pound. The party to whom the benefit of a promise accrews, may bring this Action. Hetleys Rep. 30.

By, or to another to my use.

Where a promise is to performe to one that hath an interest in the Cause, in this case hee to whom the promise is to be performed, and not hee to whom it is made, shall have the Action. If two Joynt-tenants be of a house, and the one conditions with the other to go to Market to sell it, who doth it, and appoints the payment to be made to another, here hee to whom the payment is to bee made, shall have the Action. So if my Servant by my command sell my horse, I am to have the mony, and the Action for it, and not my Servant, for the interest is in mee. Hetleys Rep. 176.

But

But in case where hee to whom the promise is made, hath no interest, there hee to whom it is made, and not hee to whom it is performed, shall have the Action. As if A. promise B. to pay I. S. ten pound upon a consideration not performed, B. and not I. S. shall have the Action.

If a man have a License to transport Herrings to Spain, and the Daughter of one of the parties has a License. And a stranger comes to him, and saith, procure mee that License, and I will give you a hundred pound, and a hundred pound to your Daughter: in this Case the Daughter shall have the Action for this hundred pound promised to her.

If a promise bee made to my under Sheriff upon a Writ delivered to him, that if hee would make Sir his Bailiff, and promised that if hee did suffer him to escape, that the Plaintiff should take no advantage of it against mee, this is a good promise and consideration as to mee, upon which I may bring my Action. Croo. 2. last publisht 178. 271.

And so generally in all Cases, any one to whose use, or for whose benefit a promise is made, may have an Action for the breach of this promise, although the promise were not made to him, but to another. Pasche 23. Car. 1. B. R. Sales Regist. 30. As if one promise my Father, that if I will marry his Daughter, hee will give mee forty pound, I may sue upon this. Hetleys Rep. If a promise bee to another to make satisfaction of all the debts in which hee whom hee assent, is indebted to another, in this case hee that is assent, may maintain this Action. M. 41. 44. Eliz. Rixon and Horton. Trin. 7 Car. Co. 8. Cones Case. Hetleys Rep. 176. 177.

If one follow a Suit for mee against I. S. and when hee is to bee arrested, to bee forborn, hee doth promise to I. S. to appeer at the day, or pay the debt; in this case I my self must sue on this promise, and in mine own name, as upon a promise made to mee, and so declare, and not upon a promise made to I. S. Croo. 2. but publisht 269. Jenk. Cent. pag. 223.

Assumpsit by, or to a man that is drunk. Part 4.

A Contract made with a man when hee is drunk, is as good as if it were made with him when hee is sober. And an Assumpsit or promise made by, or to him in his drunkennesse, is as good, as if it were made by, or to him, when hee is sober; and so hee may sue, and bee sued thereupon, as another man may bee.

Assumpsit by, or to two or more.

If an Assumpsit bee made by two, or more, at one time; they must bee sued together, and one of them cannot be sued without the other. And yet after the death of any of them, the Survivor or Survivors may bee sued. Bulstr. 1. part 16.

If an Assumpsit bee made to two men; as where two men Cattle bee distrained, and upon their payment of ten pound to him, hee doth promise to procure the Cattle to bee re-delivered to them. In this Case they must joyn, and may not sever in Action. And so generally where an Assumpsit is made to two, or more; no one of them may sue whilst the rest live, but they must sue all together. But after the death of one of them, the Survivor, or Survivors alone may sue. Stiles Rep. 156, 157, 202. Cro upon Lit. 297. Brownl. 2. part 99 Noys Rep. 135.

Assumpsit by a Parson, not binding to the Successor.

The Contract of a Parson with one of his Parish about increase of Tithes, will not bind the Successor after the Parsons death. But it will dye with the person that made it. March. Rep. 87.

By an Abbot.

If an Abbot had bought goods, and part of it had come to the use of his house, and part of it not, yet was hee chargeable for all. 38 Hil. c. 28.

Assumpsit to a Testator, or to an Executor or Administrator. Part 5.

An Executor or Administrator may have this Action against another man for money for Corn, or other things sold by the Testator, or upon a promise

promise to save harmless, marry, or the like, made to the Testator. And he regularly may take advantage of all the Contracts made by the Testator; as for a Rent due, or upon a Trover, and Conversion, Assumpsit made to the Testator, and the like. Croo. 1. 159. part 1. last publisht 377. Stiles Rep. 463. Coo. 9. 86. Plow. 82. Croo. 2. 299. Bendloes 172

Assumpsit by a Testator, or by an Executor, or Administrator. Averment.

It is now out of question, that this Action will lye against the Executor or Administrator upon the Contract, or Assumpsit of the Testator. And that without any Averment of Assets at all; but these things have been much controverted heretofore. And so it will lye in all cases whatsoever, wherein there is a Contract made to the Testator, or Intestate, or any thing due which ariseth by way of Contract, and where the ground of a promise is a true debt. As where he shall for good cause promise to pay mony, or where he shall borrow mony, or where he shall buy, or have any of my goods. So where he shall promise mony for a Marriage portion. And so although it be to be paid after the Testators death. Yelverton 55, 56, 57. Brownl. 2. part 137. 138. March Rep. 9. Gobb. Kerchers Case. Pasche 8 Jac. pl. 243. in the Exchequer Chamber. Bulstr. 1. part 158, 159. Owens Rep. 56. Croo. 1. last publisht 59. Coo. upon Lit. 53. Dyer 114. Coo. 9. 87. and 10. 77. Croo. 1 613. Bulstr. 3. 235, 236.

And in 20 Jac. Croo. 2. 663. in the Exchequer Chamber, it was agreed by all the Judges, and adjudged; That there is no difference between a Collateral promise made, and broken by the Testator in his life time, as where it is to deliver up such a Bond (as the case was there) or the like, and a promise made by him to pay mony for a Marriage portion, or the like; for the Executor shall be charged in both Cases alike. Croo. 2. 294. 571. 662. Jenk. Century 6. Case 81. Cent. 8. 80. Hobb. 236. Stiles Rep. 158.

And yet it is said, that this Action will not lye against the Executor, or Administrator of a Lessor that doth covenant to pay quit Rents during the Tearm. M. 2 Jac. per Curiam in Herlakendens Case. Yelvertons Rep. 89. Coo. 9. 87. Croo. 2. 570.

But the Law is now, that regularly the Executor or Administrator shall be charged with all the Contracts made by the Testator in this Action. Coo. 9. 86. Plow. 82. As if a man promise to pay mony, or to pay that which is the nature of a debt, or where the ground of the promise is a true debt, and he dye before it be performed, the Executor or Administrator shall be charged with it. Hobb. Rep. pl. 278. Coo. 9. 68. Plow. 182. But otherwise it is where the Assumpsit is to do some Collateral thing, as to build a house, or the like. Or when it is to pay mony in consideration of some Collateral thing, as in consideration of the enlargement of a man out of prison, or the like. And upon this difference it is said it hath been oft adjudged. Trin. 3. Jac. B. R. Yet see Coo. 10. 77. It was given as a general Rule, That by the Assumpsit of the Testator to pay a debt, or perform a duty, an Action of the Case lieth against the Executors. New. B. of Entries f. 1, 2. Plow. 181. Croo. 1. last publisht 59. 91. Croo. 1. 216. 370. And yet see Croo. 1. last publisht 454. 37, 38 Eliz. in the Exchequer Chamber upon a Writ of Error between Stubbins and Rotheram it was adjudged. That where the Testator promised in consideration of a Marriage to pay a hundred pound, that this is not recoverable of an Executor or Administrator; And there said, that the like Judgement was given between Griggs and Hellhouse in an Action brought against an Administrator, upon a promise of the Intestate to pay mony, &c. Croo. 1. last publisht 455. Croo. 2. 571. But the judgements of latter times are otherwise. And in

*Co. 205. 206

Pasche

Pasche 18 Jac. B. R. A. in consideration that B. would marry her, assumed to pay her worth five hundred pound, and died. And in the Exchequer Chamber it was adjudged upon a writ of Error, that the Executor is chargeable. Croo. 2. 511. If the Testator bring an Infant any wares, or an after give bond for it, nil dicit; and his Executor without any other consideration doth assume to pay it, no Action will lye for this. Adjudged Owens Rep. 54. Nor will it lye upon a general Indebitatus with the Testator, or Intestate. March, 94. Cwend Rep. 94. See Popham 189. Stiles Rep. 463. sect. 3. of this chapter. part 2.

Sect. 3.

Every Agreement including any thing to ground this Action upon, must be perfect, and consummate. For if there be only a Treaty or Communication begun, and not perfected, no Action will lye upon it. And therefore if one agree with me to give me so much for my horse, and I shall judge him to bee worth; this Contract is not compleat, nor can any Action bee grounded upon it, till I shall have given my judgement. And for this the Law will allow reasonable time. And if I dye before he give his judgement, the Contract is determined. Plow. 6. 24. H. 8. 19. But if he mov he hath delivered, or money paid before the property alter, or Action lye for the money. See more Cases, Plow. 302. Dyer 356. 17 Ed. 4. 4. 9 H. 7. 21. 10 H. 7. 6. Cool 5. 83. Plow. 302. 479. Dyer 98.

Contract or Assumpsit perfect, or imperfect. Part 1.

So if a Bargain bee, that the Buyer shall go and see the thing, and if hee like it, shall give so much for it; and hee when hee seeth it doth declare his liking of it, or take it away: thereby the bargain is perfect, and hee cannot afterwards by disagreement avoid it. And if hee dare not like it, hereby the Contract is determined. And it is not perfect till hee declare his liking of it. 18 Ed. 4. 16. Dyer 99.

Contracts avoidable, or not.

If two speak together about an Agreement, and they in the midst of their discourse break off, and say they will talk further of it to morrow; this is imperfect, and no Action will arise upon this conference. Plow. 302.

If the Contract bee to pay part of the money presently, and the rest at a day to come, and the seller give him time till that day to refuse; In this case the bargain is not perfect till the day, and yet if hee agree to it before the day, this may perfect it, and reciprocal Actions will lye for the thing and money. Dyer 99.

Reciprocal Assumpsits.

If two bee in speech about Marriage between their children, and one of them saith to the other, I intend to give my Daughter a hundred pound to him that shall marry her with my consent; this is not compleat, nor will any Action lye upon it.

If the Agreement bee, that hee shall see the thing, and if hee like it when hee hath seen it, for so much money hee shall have it; in this case when hee hath paid the money, and agreed to have it at that rate, and not before, the Contract is perfect, and Actions will arise. 17 Ed. 4. 1.

If a Lessee for years by Agreement sell away his Interest, on Condition that the Purchasor shall get the good will of the Lessor, and pay the Lessee so much as I. S. shall arbitrate; in this case when hee hath gotten the good will of the Lessor, and I. S. hath arbitrated what shall be paid, I. S. may sue for the money. 14 H. 8. 20.

If a Contract bee for anything at a price, but it is part of the bargain, that the thing must bee delivered to the buyer at such a time and place; this is a good Contract to alter the property, if the thing bee delivered

Property alter.

at the time and place, otherwise not. Fitz. Mostrous de Faits. 144.

If I prize wares, and the Tradesman say so much, now the bargain is not perfect, till the money bee paid, unless a day be agreed upon for the payment of the money. 17 Ed. 4. 1.

Contract in Law. Contract not pursued.

If one promise mee three shillings a week for his dyet and lodging, and I finde him dyet, but do not finde him lodging, this Contract is perfect. But no Action can be brought for the three shillings a week upon this Contract. But an Action will lye for the dyet upon the Contract in Law. 9 Ed. 4. 1.

Apportionment of a Contract.

If I bee an Artist, and one promise mee ten pound to teach him my Art seven years; this Contract is in the making of it perfect enough. But if I dye before the seven years ended, the money is lost on my side. And if the other pay mee the ten pound, or secure it by bond, then it is lost on his side. 21 Ed. 2. 11.

Contract determined.

If one promise to serve mee a year for ten pound, this Agreement is compleat; but if before the year expired, hee doth depart out of my service, or dye, or we part by our Agreement, the whole debt is lost. But it is said, if the money were to be paid quarterly, and hee serve a quarter, that he shall have the quarters wages. 10 Ed. 4. 18. 10 H. 6. 24.

Part 2.

If a Contract be for twenty bushels of Corn at a price, and that the buyer shall pay for them, as hee doth fetch them; this is a good Contract, and the party shall pay for it, as hee doth fetch it, or the seller may refuse to deliver it. Dyer 30.

A Lease parol of Land for years, yeelding a Rent, is a perfect Contract, that hath quid pro quo, and a good consideration on doth sides. Keilw. 69.

If the Contract bee to have for Cattle sold, ten pound, if the seller do such a thing, otherwise twenty pound; this is a good Contract, and certain enough. Perk. sect. 712. 714.

If I sell one wares for twenty pound, to bee paid when they are delivered; this is a good Contract, and when they are delivered, and not before, the Action will arise upon it, Fitz. Debt 56.

If I sell one wares for twenty pound, to bee paid when they are delivered, and not before; this Contract is entire and perfect. Fitz. Debt 56. And if it bee that the seller shall bring and deliver them at such a place, they must bee delivered at that place. Fitz. 144.

Contract property altered.

If I sell a thing to another, and no price is agreed upon, and he take the thing into his hands, the Contract it seems is good. And if it bee Wine, or any such like thing, the certain price whereof is known, and set by Law, that the seller may sue for that money in certain. But that in other Cases the Plaintiff must suppose in his Suit for his money, that the buyer promised to pay as much as the thing was worth; And hee must averre it to be worth so much in certain. Trin. 3 Jac. B. R.

Count.

Averment.

If I lend one money, and thereupon hee enseoffe mee of Land, and by agreement, I am to have the profits thereof till hee pay mee the money; this Contract is compleat, and it seems whilst I have the Land, I may not sue for the money. Fitz. Debt 100. But if one have a field of Corn, and agree with mee, that I shall have all the Corn there for twenty pound to bee paid at Michaelmas next. Con. 4. 92.

Trespasse.

If A. sell Cloth to B. for ten shillings, and B. takes away the Cloth against the will of A. in this case A. may have trespasse against him for it, if the money bee not paid. And if A. sell Cloth to B. for ten shillings, in his election to make it a bargain or not; in this case if hee will he may keep his Cloth till B. pay him; and if A. say nothing, but suffer

fer

fer B. to take it away, A. may make it a bargain if hee will, and bring an Action of debt for his money. And. Debt.

If I offer money for a thing in a Market or Fair, and the seller agree to take money, and whiles I am telling the money as fast as I can, he doth sell the thing to another; and where upon such an offer and agreement that hee shall keep the thing till I can go home to my house to fetch the money; in both these cases, especially in the first case, the bargains are perfect, so as the seller may not sell the thing to another, and upon the payment, or tender of the money by mee, and his refusal thereof, I may take the thing bought, or if hee refuse to let mee have it, I may sue for it. Mayor 29. Ass. pl. 14. H. 8. 3. 9. pl. 10. 2. Ass. pl. 26. 21. H. 7. 6. Plow. 432. Bargain perfect.

If I sell my horse to one first, on condition that he pay me the money at a day, and before the day I sell him to another, this second Contract it seems is void, albeit I be not paid my money, and that I may seize my horse again. Cro. 43. Sale of the same thing twice.

And if a husband sell the Trees from off his wives Land for money, and the buyer doth cut and carry away part of them, and the money is paid, but either the rest of this the Contract is not gone for that which is paid, but the rest of the money must be paid. Dyer is gone for the Trees, or the Buyer may put no more Trees. And yet if the Contract were to cut them at such a day, and not before, and he cut some of them before the day, and the rest before the day, in this case the Contract will be void, and he cannot be forced to payment of the money. 18 Edw. 4. 6. Brook Contract 26. Of Trees.

If one sell me a Lease of years, and Corn, by the Contract for an entire summe of money, and the Corn be taken away from me by the right owner, before the money be paid, yet the Contract is gone, and I must pay all the money. So if I sell two Horses for ten pounds, and one of them is another mans, who takes him away, yet the Contract is gone, and hee will recover the ten pounds, and he will take his Action of the Case against mee, for selling of another mans goods. 7 H. 7. 4. Contract apportioned.

Goodman 18 Eli. 4. 6. 9 Edw. 4. 1. 15 H. 8. 23. Action for Deceit.

If A. and B. agree that A. shall lend B. twenty pounds for a time, and that for this, that B. shall mortgage such Land upon Request to A. and after A. upon request of B. deliver wares to C. for part of this twenty pounds, and hereupon B. doth accept it for part of the money, or to receive it to A. upon request, this Contract is perfect enough. Old B. of Entries 4. Contract certain.

If A. owe B. one hundred pounds, and C. being a Clothworker to A. hoslin Cloths of his in his house, and they three agree that B. shall have these Cloths for his money, and that C. shall deliver them, this is perfect. Adjudged. So if one possesse of a field of Corn, agreeth with another, that hee shall have all the Corn there for twenty pounds to be paid him at Michaelmas next, this is certain enough. Cok. 4. 92.

And upon these, and such like Contracts as these, wherein property is altered upon a sale, if there be any thing executory in it, this Action will lye.

Sect. 6.

For the consideration of it, and what shall be said a good consideration in law, in such a Contract of Assumpsit, or grounds that the Action upon not, or not.

Consideration, what. Part 1.

Consideration is such, be somewhat of profit and benefit to him whom it is done, by reason of the charge or trouble of him who doth it.

And as touching the cause, or consideration of a Contract, or Assumpsit, it is to be known,

1. That every promise must have a consideration in fact, and that must be of somewhat that makes it to be some disadvantage to him to whom it is made. Mench. Rep. pl. 242.

2. That there are these things requisite to make the Cause, or Consideration of an Assumpsit good. 1. It must be valuable; that is, it must importune some to him that makes the promise, or at the least should be to his use, when it benefits, or both. But the consideration of the wed ding not considerable for a penny, or a pinch of white salt as much and yet a Contract and bond or Assumpsit thereof grounded upon such a consideration of five hundred pounds. But in that case the Judge will probably give honorous heedfulness. Yet the Law is all one in this, where the Contract is in writing without seal, or a writing sealed but not delivered, and where it is by parol onely. But if it be in a writing sealed and delivered, and becomes a Deed, if the consideration is not at all material. Hobb. Rep. pl. 6. 7 Jac. Friends Case. Cro. 1. Car. 102. Brooke Action upon the Case. Fitz. Debt 138. And yet if there be divers parts of the consideration, and one of them is valuable, have the other not, it is good enough. But if it bee in a Non Assumpsit, that is pleaded to the Action, both parts must bee proved, or the Action will fail. M. 4. Jac. B. R. Rodecs Case.

Considerations valuable, or not.

2. The consideration must bee lawful; for if the consideration moving the promise, be either malum in se, or malum prohibitum, there it will be all void. But yet if part of the consideration is lawful, and part not lawful, it may bee good. Dyer 259. Cro. 1. 102.

3. The consideration must also be possible, or it will not be estimed good.

4. If the consideration bee executory, it must bee fully pursued and performed, before the Action can bee brought. 9 Hen. 6.

Propertie. Change by Bargain and Sale.

If the Contract be by word of mouth, or by a writing not sealed and delivered, if there bee no consideration, or no good consideration in it, it is of no effect at all. As therefore if upon a bargain I sell to me his horse, or other thing, and I give him, or promise him nothing for it; this is void, and will not alter the property of the thing. But if one sell unto a horse, or other thing for money, or other valuable consideration, and the thing is to bee delivered to me at a certain day, and by our agreement a day is set for the payment of the mony, or all, or part of the mony is paid in hand; or I give earnest mony (albeit it bee but a penny) to the seller; or I take the thing bought by agreement into my possession, where no mony is paid, earnest given, or day set for the payment; in all these cases there is a good bargain and sale of the thing, and the property is altered. And in the first case I may have an Action for the thing, and the seller for his mony; In the second I may sue for, and recover the thing

thing bought. In the third [illegible] thing bought, and the seller for the refuse of the money, [illegible] called [illegible] in [illegible], we may have reciprocal remedies one against another. And in the last case the seller may sue for money, [illegible] the thing bought.

If A. sell Cloth to B. for [illegible] and B. takes [illegible] that gainst the [illegible] agreement, [illegible] how it shall be paid; in this case A. may have an Action of Assumpsit against B. for it.

And if A. sell Cloth to B. on [illegible] promise [illegible] not; in this case hee may if hee will keep his Cloth till the other pay him his money. And if A. say nothing, but [illegible] take it a bargain if hee will, and bring this Action of Debt for the money.

And if I offer money to [illegible] and the seller agree to take my offer, and whiles I [illegible] as fast as I can, hee sells the thing [illegible] have bought it, wee agree that [illegible] money house to fetch the money; in both these cases, especially in the first [illegible] the bargain [illegible] to another. And upon the payment, and is also upon the tender [illegible] [illegible] Plowden. [illegible] Cro. Eliz. 6. Plow. 308. [illegible] Stud. 105.

If I promise to one, that he [illegible] twenty Crowns, that I [illegible] to him again, no Action will lie for this. But if he deliver [illegible] Plow. 308. 347. [illegible] Stud. 105.

If I promise to give [illegible] my pay-master [illegible] money [illegible] Cro. Eliz. 6. Plow. 308. 347. [illegible] Fitz. Debt 146. [illegible] Stud. 105.

But for the further opening of this [illegible] there ought. But for the understanding of this [illegible] bee [illegible] Contract or promise to raise an Action upon them (that is to say) [illegible] money. L. B. Eliz. fol. 1. [illegible]

To give, sell Land, or deliver a House, or any other valuable thing.

To forbear, or delay a Debt, or other [illegible] Action to recover it. Cro. 2. 47.

To lend another to enjoy his House, Land, [illegible] Jac. B. R. Covenatries Case. Bulst. 1. part 38.

Debt.

Assumpsits void.
Nudum pactum

Consideration valuable, or not.
Part 2.

To

To keep a man's house, or other goods safe. Old B. of Entries 9.

To ear land, build a house, solicite a business, or any such like, for another man. Kelw. 69.

What things to be done by the consideration of an Assumpsit, are good, or not

To pay another man his debt, or deliver his goods without suit, for that he saith that both B. or for another man. Croo. 1. 284.

To take bounding a Forest with another, to do a thing for him, which B. B.

To enter into an Obligation.

To make an estate of Land, or to surrender, or release an Estate in Land. Plow. 200. Kelw. 69. 70.

To marry with another, a Gentleman, or Friend, New B. of Entries fol. 2. Sids Rep. 295.

Covenants against the validity of a will.

Covenants to guide.

Covenants to take out of Prison. Pasche 9. Jac. B. R. Ballet's Case.

Covenants to take a Journey to marry any woman. Brown. 1. part 4.

Covenants to take a Journey to wive a man. Brown. 1. part 194.

Covenants and assumpsits, Hob. 3. Covenant 37. A plate of Cities. Trin. 7 Jac. Frickis Case. Hob. 88. any thing, which for the matter of it may be good in the promise it self, may be good in the consideration of a promise. And although it be such a thing as the party promising hath no benefit by it at all, yet if the party to whom it is made have any damage or burden with the consideration may be good. Brown. 1. part 42. 2. part 274. 297. 269. But if there be nothing of profit, nor any pleasure of profit on the one side, nor of appearance of burden, charge or trouble on the other side, as where the consideration is only to deliver a man his own writings, or to pay him his own debt, after it is due, to deliver him his bond when he hath paid the money upon it, to deliver goods, cattle, to deliver them unto another, or the like; these considerations are not good, and therefore when they are the Causes or Motives of the Assumpsits, they are void, and no Action will arise upon them. Croo. 1. last publishe 194. 280. and in many of the following Cases.

Parson and Parishioner for Tithes.

If my Parson agree with me that I shall keep my own Tithes this year, if that be after the Corn is sown, the Contract is good. But to some hold that a contract between the Parson and one of his Parishioners to keep back, and retain his Tithes in his hands for three or four years, that this may be a good contract. But a contract between them for the Tithes of a thousand cannot be good by word of mouth without deed. And some hold that contract made between them for the Parishioners own Corn that if the contract be before the Corn is sown, or for longer time than a year, that it is not good, unless it be made by deed. And it seems to be agreed for Law, That a contract made by word of mouth with a Parishioner for the keeping back of his Tithes for so many years as he shall be Parson, is not good, nor any way, but by way of retainer for a year. Brown. 1. part 12. 27. Owens Rep. 103.

Part 3.

For a Rent.

This Action it will not lye for a Rent without some special promise made about it; nor for a debt on a Specialty, or Record. Croo. 2. 598. Nor will this Action lye upon a bond sealed and delivered. Croo. 2. 506. Croo. 2. 664. 668.

For a Lease for years.

If one promise unto in consideration that he may have and enjoy quietly the herbage of such a Park for three years, that hee will pay mee ten pounds; this is a good consideration and contract, on which this Action may lye. Croo. 1. 250. Sir G. Mansell. 17 Jac. Adjudged. And yet if I let

Land

Land to one for a year, who doth promise to pay mee for this Lease at the years end twenty pound, not this Action, but an Action of debt lyeth for it. Croo. 1. last publisht. 786.

If one keep a common house next to the Prison, and hee in consideration that I will suffer him to have the keeping of a prisoner, by which hee may utter his meat and drink, &c. promise to keep him safely, and save mee harmless from all escapes; this is a good consideration and promise. Croo. 1. last publisht 123, 124. About an Escape. Save harmless. By way of Recouper.

If one owe mee twenty pound, and I buy of him goods to the value of five pound and it is agreed between us hee shall keep up this five pound towards his twenty pound, it is said, that this will not barre him of his five pound, if hee sue for it. Fitz. Debt 56.

So if one promise mee, that I shall retain the Rent I owe him, for many hee is to pay mee, it seems this will not discharge so much, nor may I plead it in barre to an Action for the Rent. But I may bring an Action upon the promise, if there bee any consideration in it. Mich. 9. Jac. B. R. Jarvis Case. Assumpsit.

If one promise to mee that have a Tearm of years in Land, that if I bee ejected by him, or any other, during the Tearm, that hee will pay mee forty seven pound; this is a good promise and consideration in it self. But in his Suit for breach thereof, hee must set forth by whom and how hee was expulsed. Croo. 1. last publisht 179.

If one arrested at my Suit upon processe, in consideration that the plaintiff will let him go at large, and give his warrant to the Bailiff, to set him at liberty, assume to appear at the day of the return of the processe, or give to him ten pound; this is a good consideration and promise. Croo. 1. last publisht 190. But if such a promise bee made to the Sheriff, or to any other to his use, it were not good, being against the Stat. of 23 H. 6. Consideration unlawful.

If I bee to pay another five pound on a Bond upon the first of November, and hee after the day, in consideration that I will pay it him without trouble, promise to deliver mee a Bond, that I. S. is bound to him for twenty shillings with a Letter of Attorney to sue for the debt; it seems this is not good. Croo. 1. last publisht 194. For there is no consideration in it to pay his own mony after it is due. So to deliver a man his own writings, seems to bee no good consideration. Consideration unvaluable, or *Nudum pactum*.

If one have a Suit against my Father, for taking of the profits of Land in Chancery, and I promise, that if hee will surcease his Suit, and can prove that my Father hath taken the profits, &c. that I will answer the profits; it seems no good consideration; for it is no reason if my Father take the profits, that I who am neither Heir or Executor to him, should answer it, it being but a personal wrong. And it was adjudged for the Defendant. Croo. 1. last publisht 207.

If I bee bayl for anothers debt in the Kings Bench, and the Creditor recover his debt there of mee, as hee may, and then hee doth in consideration of this, promise to mee the principall obligation, and a Letter of Attorney, to sue it against the principal debtor; this is no good consideration, and therefore not a binding promise, for hee hath done nothing to merit it, but what hee was bound by Law to do. Croo. 1. last publisht 538.

If I by word or promise undertake to keep a mans goods safely till such a time, and hee give mee nothing for it, and after I refuse to take them, no Action will lye against mee for this. But if I undertake and receive them, and they be afterwards impaired, or lost, by any negligence of mine, To unde take to keep goods. Part 4.

mine, it is otherwise. And yet if I take them into my custody with this Caution, that if they be lost, I will not answer them, or that I will keep them as my own, or the like, there I shall not be chargeable, Cro. 4. 784.

To make an assurance of Rent, as of Council.

If A. owe me a hundred pound upon bond, and B. his brother being a lawyer, in consideration that I will at his instance deliver up my bond to be cancelled, and lend him a hundred pound more, and trust him onely with the making of the assurance of the two hundred pound, and use no other Counsell in it, that hee will make such an assurance for it, by which I shall have more advantage of it, if hee make default of payment of the two hundred pound, than A. had for the one hundred pound. And B. knowing the Land was in A. in taile, the Remainder to B. grants a Rent charge out of it to me, by which, &c. this is a good consideration and promise, and if I performe the consideration, I may have this Action for the deceit. Croo. 1. last publisht 246, 247.

Deceit.

To deliver up Statutes I have upon his Land.

If my Debtor, who hath Statutes from other men, deliver them to mee towards my satisfaction, and dye; and one that is neither Executor, nor Administrator, request mee to deliver him the Statutes, and hee will promise therefor, this is a good consideration. Hobb. Rep. pl. 7. And if the Terre-tenant promise mee money to assign and deliver me a Statute I have upon the Land by way of discharge; and he do so, this is good. But if it were to deliver it by way of Assignment to a stranger, contra, for this were an unlawful consideration. Patche. 38 Eliz. B. R. Berrow and Gray.

Assignment.

Consideration unlawful.

If I bee bound to one in an obligation of forty pound, to pay twenty pound, and I, because I conceive the money is paid, threaten him with a Suit, and take out a Subpœna, and hee, in consideration, I will forbear my Suit, promise to deliver mee up my bond upon request; this is good, and I may have this Action upon it. Adjudged, and affirmed in a Writ of Error. Croo. 1. last publisht 768.

Forbearance.

Pleading.

If a Statute bee forfeit by the Assignment of a Lease, and the Conusee doth promise the Conusee, that if hee will not sue it, hee will pay him a hundred pound; this was adjudged good, and that without shewing how by the Assignment the Covenant for the performance whereof the Statute was given was forfeit. Bulstr. 2. part 262.

Forbearance of a debt discharged.

If A. and B. bee bound to C. in a bond jointly and severally, and C. doth release to A. And after B. and C. talking together of the Debt, B. in consideration that C. would forbear him, till such a day promised to pay him; this is no good consideration, for by the Release to one, the other is released, and so there was no cause of Suit. Marches Rep. pl. 243.

Forbearance a little time.

If one that owes mee money, doth promise, that if I will forbear him for a little small time (to wit) for some fortnight, or thereabouts, that hee will pay mee, that this is good. But that if this explanation of some fortnight, &c. bee not been added, it had not been good. Bulstr. 1. part 41.

A promise against a promise.

One promise may bee a good consideration of another promise. As where I am indebted to another twenty pound by Bill, and hee assume to mee to deliver mee up my Bill, and I assume to him to procure two sufficient witnesses to be bound for the twenty pound. And in this Case hee that sues for not bringing men to bee bound, need not shew that hee delivered up the Bill, &c. Croo. 1. last publisht 543.

Forbearance of a Debt, or Suit.

If a Testator were indebted to mee twenty pound on a bond, and the Executor promise in consideration, that I will give him day for one year, that hee will pay; this is a good consideration, and a good Action will lye upon the promise. Croo. 1. last publisht 643, 644.

If

If one bee indebted to mee on an obligation, and I assign the Debt to the King, and after the Obliger, in consideration that I will forbear to procure any processe against him for the debt, until Hilary Tearm following, promise to pay mee the two hundred pound; this is no good consideration, for no benefit, or ease to the Defendant. So resolved by all the Judges and Barons in the Exchequer Chamber in a Writ of Error. Croo. 1. last publisht 654. Forbearance.

If I sue another, and wee are at issue, and hee in consideration that I will stay from further prosecuting the Suit, promise to pay all my charges and expences therein, and I do forbear; this Action will lye, for the consideration is good, albeit it lay not how long hee should stay his Suit, Croo. 1. last publisht 868, 869. Forbearance.

If one promise to serve mee for wages agreed on, and for six pence given in earnest, and do not, I may have this Action against him. Bridgman 119. Earnest a good consideration to binde a Servant.

If one promise to build mee a House, make mee an Estate, and to do any such like thing, and there is nothing given, or promised by mee for the doing of it; no Action will lye upon this. And where one doth promise mee to do a work by a day, and it is not agreed what he shall have for the doing of it, or when, or if it be agreed, no part of the money is paid; in this case I may not sue for the work not done, nor can hee sue for the money, but if the promises be mutual for the work, and the recompence, wee may have mutual Actions, the one of us against the other. Dyer 21. 21. Plow. 25. 3 Bul. 6. 36. *Nudum pactum* Part 5. Reciprocal Actions.

If the Obliger pay the money to the Obligee after the day, and thereupon the Obligee promise to deliver the Bond, and doth not, no Action will lye for this, nor hath the Obligee any remedy for it, but in Equity. *Nudum pactum* Equity.

If I lose my Mastiff, Hound, Grey-hound, Spaniel, or Tumbler, and one that hath him by Trover, doth promise to deliver him to mee upon request; this is such a case as will give ground for this Action. Croo. 1. last publisht 125. And yet if I promise to another any thing to deliver to mee mine own writings; this is no good consideration. Yelverton 128. Promise to deliver mee my goods lost, good or not.

If one in consideration that a stranger shall surrender a Lease to him at my request, and that I will cancel such an Indenture, promise such a thing to mee; this is good, and I may have an Action upon it. Pasche 9 Jac. B.R. Collins Case.

If I bee in debt to I. S. and I deliver goods to A. B. to pay I. S. and I. S. doth require the debt of A. B. who doth desire to forbear him three weeks, and hee will pay him; this is a good consideration, and Assumpsit to give Action. Williams Case. M. 7 Jac. B.R. But in this case he shall recover damage onely for forbearance; for the debt is still recoverable of mee, as it was before. Mich. 2 Jac. Lees Case. B.R. Consideration of forbearance.

If A. owe to mee ten bushels of Corn, and deliver them to B. to deliver to mee, and B. pray mee to forbear till Michaelmas, and hee will pay mee the Corn, or the worth of it; this is a good Consideration and Assumpsit. Mich. 18 Jac. B. R. Jacksons Case.

An Assumpsit or Agreement to do a thing upon consideration, that hee to whom the promise is made shall surrender an Indenture to him, is a good consideration to ground an Action upon for breach of it, although hee to whom the Indenture is intended, do take no estate by the Indenture. Mich. 23 Car. 1. B.R. To surrender an Indenture. To deliver up a Bond when the money is paid.

If the Obliger pay the money to the Obligee, and the Obligee promise

nice to deliver up the bond, and do not; no Action will lye for this, for the consideration is not good, nor hath he any Remedy but in Equity.

An Assent.

A. grants his Tearm to B. if C. will agree, B. promiseth twenty pound to C. for his Assent; this is a good consideration to ground an Action for the twenty pounds. Trin. 12 Jac. Co. B. Gresly and Loucher.

Marriage. Consideration valuable.

If I promise to a woman having a husband, who hath a daughter and heir to Land, that if shee will give her consent that I shall have her Daughter, I will pay her ten pounds; this is a good consideration. Adjudged. Hobb. Rep. pl. 26.

Consideration unvaluable.

If a Bryllin pay the debt, and thereupon the plaintiff promise to deliver to him the principal Obligation, and a Letter of Attorney to sue the Principal; this is no good consideration to raise an Action. Adjudged in the Exchequer Chamber, 38. 39 Eliz. Dixon and Addams.

If one promise mee to pay mee as much as I. S. (who is in prison at my Suit) doth owe mee, if I will deliver him; this is a good promise, and I may have this Action upon it. 27 H. 8. 24.

Forbearance.

If I have a Suit against I. S. and I. S. knowing of it, doth pray mee to forbear to go any further in that Suit, and hee will pay mee twenty pounds; this is a good consideration. Hobb. Rep. pl. 278. And I need not to shew any cause of the first Action. But if the consideration be to forbear, and say not how long; this is not good, as some say. And yet see H. 21 Jac. in Assumpsit, for that the Defendant in consideration the Plaintiff would forbear to sue one I. S. upon an Obligation of eighty pound, promised to pay him the debt; and he shewed in his Count that hee had forborne him for a year and a half. And there it was held, that a consideration to forbear to sue such a one for such a debt, is a good consideration, and shall be intended a total and absolute forbearance. And that if the Defendant paid it before upon this promise, and after the Plaintiff sue for the debt, the Plaintiff is chargeable in an Action of the Case; for it is an Implied Promise in the Plaintiff, that he should forbear his Promise totally. Croo. 2. 683. Hobb. Rep. pl. 287.

Count.

But if one owe mee money, and he himself, or another on his behalf promise mee, that if I will forbear him [or not sue him till such a day] or not go forwards in my Suit begun against him till such a day, that he will pay mee; either of these are good considerations to give an Action. Croo. 9. 90. 94. New Book of Entries, fol. 8. to 47. Sir Moyl. Finches Case. M. 4 Jac. B. R. But if re vera no debt were originally due; some doubt whether the Action will lye or not. So if the promise be by an Executor that hath no Assets in his hands. Croo. 9. 90. 94. Bulst. 41. 43.

How construed.

If A. lease to B. rendring Rent, paying out Rents, and making reparations, &c. the Lessor in consideration thereof doth promise the tenant & sollicitare, tractus & possessionem of the Lease, quiete & pacifice absque interruptione; this is a good consideration, and amounts to as much as if he had said, he should quietly enjoy it. Mich. 7 Jac. B. R. Gamble and Terrell. Survey of the Law 92.

Pinte of Wine.

If one in consideration of a pinte of wine given by me, promise to assure mee Land by a day, and so not, I may have this Action upon the Assumpsit. Adjudged. Pasch. Trin. 1 Jac. B. R.

Soliciting of business.

If one retain mee to be his Solicitor, for the prosecuting and defending of some of his Law Suits, and promisethe to give mee so much; this is a good consideration, and mean, and this Action will lye upon it. Croo. 1. last publishe 868.

For Corn.

If I buy a Bushel of another for Corn, this is a good Contract, and the

the consideration must bee performed in Corn, not in money, Fitz. Debt 68.

If one promise to mee in consideration I do deliver him forty pounds, to repay mee such a day; this is a good promise and consideration. Croo. 2. 587.

If an Executor or Administrator of one that did owe mee money, in consideration thereof, and that hee hath Assets in his hands, assume to pay mée such a day; this is a good consideration to make the promise actionable, especially if I grant any forbearance in it. But if in the case there bee no debt originally due, or the party hath not Assets to pay it; some say no Action will lye upon the promise. Co. 9. 93, 94. But Justice Hutton at Sarum's Assizes, 21 Jac. held that the Action will lye, though there bee no Assets in his hands that makes the Assumpsit, especially where hée saith, hee hath Assets, albeit hee hath no Assets. The Forbearance of an Executor of a Debt due from the Testator. Part 6. Assets.

And so was it held in Barnes Case, Pasche 9 Jac. B. R. per Curiam.

If an Executor owe mee five pound for the Testator, and hee buy of mée six Barrels of Beer, and in consideration thereof, promise to pay mée for both; this is a good consideration for both, to charge him de bonis propriis. Trin. 37 Eliz. Cook and Wheelers Case. But in these cases the Plaintiff is (it seems) to shew in the Count the cause of the first debt, what it was. But others hold the contrary. Croo. 2. part 206, 207. Croo. 1. 3. 21. The Executor in consideration that the Plaintiff would forbear his debt, till probate of the will, promised payment; this was held good. So if hee acknowledge the debt due from the Testator, and pray forbearance till such a time, and promise then to pay it, and the Plaintiff do forbear; this was held actionable. Whether hee had Assets, or not, and that in this case the Plaintiff need not to averre hee hath Assets. Bulstr. 2. part 278. Croo. 2. 47. Croo. 1. 82. Consideration of a former Debt good. Count. Forbearance. Avermem.

If one in consideration of a debt upon Arrearages of Account promise to pay it; this it not good. But if one in consideration of Cloths delivered to him, promise to pay money; this is good. Croo. 1. last publisht 537. Consideration not valuable.

If one in consideration, I will let him have goods of his out of my house, promise any thing; this is a good consideration to make good the promise. Croo. 2. 512. To let a man have his own goods.

If one promise to mee in consideration, I will forbear the debt hee or another owes mee, a little while; or in consideration that I will a little stay my Suit I have against him, hée will pay mée; this is not good. Croo. 1. last publisht 19. Incertainty.

If one in consideration that I will stay my proceedings in a Suit of Law I have against him, for ever, or for any certain time, promise to do any thing; this is a good consideration. But if the consideration bée, in consideration that I would forbear paululum temporis onely; this is not good, but incertain. Trin. 23 Car. 1. B. R. Stiles Regist. 31. Bulstr. 3. 106, 107. The same Law is upon a strangers promise to mee. Co. 9. 94. But then it must bee shewen that I did agree to it. Mich. 39 Eliz. Co. 8. Milwards Case. And then the Count must shew how the debt grew due. Co. 10. 77. And yet A. declared, that B. was indebted to him twenty pound, and shewed not how long, and that the tenth of September, 7 Jac. hee promised, if the Plaintiff would not arrest him, but forbear till the 21 of September, hee would pay him, and shewen that hee did forbear so long. And there it was held. That where the plaintiff doth count of the forbearance for a certain time, there it is good, without shewing when the debt grew due, otherwise where the forbearance is for a time incertain. Trin. 9 Jac. B. R. Deane and Nubie. Survey of the Law. 90, 91. To stay Suits in Law. Forbearance. Count.

Pleading. If an Administrator desire to bee forborn such a time, and hee will pay the debt; this is a good Assumpsit, and the Plaintiff shall not need to set forth that hee hath Assets, for that shall bee intended. But it may bee given in evidence, and if the Defendant hath fully administred, and hath nothing left, hee may shew it, and then hee will not bee chargeable. Coo. 9. 90. 92, 93, 94.

Forbearance. If one declare that the Intestate was indebted to him a hundred pound, and the Administrator, in consideration thereof, and that the Plaintiff would forbear him for a reasonable time, promised to pay it, and it was adjudged for the Plaintiff, and that forbearance for a reasonable time is a good consideration, because the Court may judge of it. But that forbearance pauxillum temporis is not good. Trin. 14 Eliz. B. R. Lingill and Broughton. Survey of the Law 90, 91. And although the Creditor do forbear half a year after, this will not make the Assumpsit good; Croo. 1. last publishr 19.

Count. If the Count bee thus, That where A. was indebted to him thirty two pound, for which hee sued A. and that it was agreed between him and A. to stay the Suit, and if hee paid it not before Michaelmas, hee would give security; That in this case hee need not shew how the debt grew due,

Forbearance. for the forbearance, and not the debt is the cause of Action. But otherwise it is where the Testator is in debt, and promiseth, for there the debt is the cause of Action. 2. That hee need not shew hee did surcease his Suit, because the Agreement is reciprocal. But if the Assumpsit bee this, That A. in consideration that the Plaintiff shall surcease his Suit, promiseth to pay the debt, there hee must shew that hee did surcease. Pasche 14 Jac. B. R. Fullers Case. Survey of the Law. 91.

Forbearance. If W. bee indebted to B. and hee deliver goods to L. to pay him, and L. prayes B. to stay two or three daies, and hee will pay him, but payeth it not; in this case the Contract is good, and B. may sue this Action against him upon it. Mich. 7 Jac. B. R. Brand and Lister. Survey of the Law. 92.

A. doth pledge goods to B. and that if A. pay not such a day, B. shall have the goods. After this, and before the day, &c. C. requests B. to forbear till another day, and hee will pay the mony, and doth not; in this

Detinue. case B. may sue him upon this promise; for if C. pay the mony, hee may have a Detinue against B. for the goods. Trin. 13 Jac. B. R. Caper and Dickinson. Survey of the Law. 92.

If I have a Suit against a man for a Marriage-portion, and hee in consideration that I will forbear my Suit, doth promise to pay mee a hundred pound, and to deliver up a bond of forty pound, &c. to bee cancelled; this is a good consideration. Bulstr. 2. part 41.

Forbearance. If one promise that upon the forbearance of such a debt, that hee will pay it, and he bee not chargeable with this debt, that is supposed to sue, no Action will lye upon this promise. As where a woman is an Executrix to pay Legacies, and shee dye, and the goods are in the hands of her husband, and hee supposing himself chargeable with it, doth promise to the legates upon forbearance to pay it; this is not a good promise. Bulstr. 2. part 44, 45.

If one owe mee mony, and hee promise mee that in consideration that I will agree to give further day for the mony hee owes mee for six months, hee will secure it to mee; this is no good consideration; for hee may agree to give day, and sue after notwithstanding. M. 7 Jac. B. R.

Forbearance. If one bee bound by obligation to mee to pay L. S. mony such a day, and the

the Obliger promise to I. S. that if hee will forbear him till such a day, that hee will pay him; this is no good consideration, for I. S. had no cause of Suit against him, per Justice Bridgman.

If one promise to mee after his Dogg hath killed my Sheep, that if I will forbear to sue him, hee will recompence mee the first of May; this is a good consideration, and liable to Action upon the promise. Croo. 1. 81.

If one in consideration that I will be bound for him, promise to save mee harmless; this is a good consideration and promise. Pasche 9 Jac. B. R. Boynton and Vaughan Old B. of Entries. 11.

If A. bee indebted to B. and A. prayes C. to bee bound to B. for the debt, and hee will bee bound to C. &c. C. is bound to B. &c. A. refuseth to bee bound to C. C. shall have this Action against A. for it is a good consideration, inasmuch as C. is liable to the debt. Mich. 9 Jac. B. R. Knivet and Pleydall. So if I promise to another in consideration, hee will bee bound for my friend, I will save him harmless; this is good. Mich. 9 Jac. B. R. Somershalls Case. To save harmless one that is bound for mee. Part 7.

An Infant borrows money, B. is bound to pay it at his full age; and the Infant then doth promise him to save him harmlesse; this is a good Assumpsit, and the consideration good; for albeit the Infant be not bound in Law, yet hee is bound in conscience. Trin. 29 Eliz. B. R. Infant.

If A. owe B. a hundred pound, and C. being a Cloth-worker to A. have Cloths of his in his house, and they three agree that B. shall have these Cloths for his mony, and C. doth promise to deliver them; this is a good consideration to bind C. to deliver them, for by this hee is distharged against A. Adjudged. Trin. 2 Jac. B. R. Warder and Chapman. Consideration valuable.

If I demand ten pound of another, and hee promise mee, that if I can prove it a true debt, hee will pay mee; if I do prove it, as I may in the same Suit for the debt, this will bee a good consideration. Adjudged. Mich. 18 Jac. Scat. and Mary. Coo. 11. 59. 10 Ed. 4. 11. Proof of a Debt

If a Scrivener promise mee, that in consideration that I will let him have the putting out of my mony, that hee will take good security for it; this is a good consideration and Assumpsit. Mich. 7 Jac. B. R. Kellinworths Case. To have the letting of my mony.

If I deliver one ten pound to re-deliver to mee again, and hee do not so; it seems I may not have this Action for my Relief, but I may have an Action of Account. And yet if there bee in the Case a promise to deliver it, there, perhaps I may have relief by this Action. Hill. 37 Eliz. Co. B. Howdells Case. And yet if I deliver one ten pound to deliver over to I. S. and hee promise to pay it to I. S. I. S. cannot have an Action for this. Croo. 1. last publishe 380. Delivery of mony. Account.

If one in consideration of a Lease for years made by mee, promise to pay mee a summe of mony in groste; I may have this Action for this mony. But if for this hee promise to pay mee a yearly Rent during the Tearm; this Action will not lye for the Rent, but an Action of Debt will lye. Lit. Brooke, Sect. 452. Fitz. Debt 129. Mich. 8 Jac. B. R. Morgans Case. Making of a Lease for years. Promise of a Rent. Debt.

And yet if I promise another the herbage of my ground for a year, and hee promise mee twenty shillings for it, either does not have this Action against the other. Adjudged. Mich. 17 Jac. B. R. Sir George Marshalls Case. Reciprocal Actions.

If one promise to mee, in consideration that hee is indebted to mee so much Rent reserved on a Lease for Land, that he will pay mee by a day; this is not a good consideration; otherwise it is if hee say herbage, or for A Former Debt.

for the forbearance of a Rent reserved upon a Lease of Land. 14 Jac. B. R. Sir George Marshalls Case. Adjudged. Hill. 9 Jac. 1 B. R. Bret and Heaths Case.

Of Land sold.

If one in consideration of Land sold by mee to him, promise mee twenty pound for it at a day certain; or if I sell my Land to another for twenty pound to bee paid to mee at a day certain; in these cases I may have an Action for the mony, albeit the Land bee not assured; for hee may compel mee in Chancery to make the Assurance of the Land. 3 H. 7. 14. 2 H. 7. 12.

Equity.

Of a former Debt paid.

If I have recovered five pound of another by judgement, and in consideration of four pound paid by him to mee, promise him to acknowledge satisfaction of that judgement before such a day; this is a good consideration and promise to ground an Action upon. Croo. 1. part last publisht 429.

Part 8. Upon Account.

If two account together, and one is indebted to the other, and doth promise to pay him such a day; this is sufficient to ground this Action upon, without more. Croo. 2. 69 And so it seems it is without this promise. And if the Defendant pray the Plaintiff forbearance a little while, with a promise then to pay it, the case is the stronger. Goldsb. pl. 6. fol. 48. Hobb. Rep. pl. 117. Croo. 1. last publisht 707. This Action will lye upon an Insimul computasset, and this is a good consideration, upon which to ground it. Trin. 14 Jac. B. R. Cullimores Case. Survey of the Law. 94. It is a good consideration, that upon an Account between the Plaintiff and Defendant, the Defendant was found so much in debt to the Plaintiff, and promised to pay it. Hobb. Rep. pl. 117. And the Plaintiff shall not need to shew for what the mony was due, wares, &c. Hobb. Rep. pl. 16. Croo. 1. Rep. 82. So that the Defendant was in debt to him, and in consideration of his forbearance, such a time, promised to pay it. Coo. 10. 77. See more. Hobb. Rep. 147. 278. and pl. 16. pl. 7. See chap. 13. A. declared against B. that in consideration that hee had given him time for three months for a debt of ten pound that he owed him, that hee would pay it; in this case it is said to bee good, without shewing for what the debt was. Hobb. Rep. pl. 31. See chap. 13. and in this chapter.

Insimul computasset.

Averment.

Forbearance of a Debt.

A former Debt. Executor.

If an Executor or Administrator bee indebted to mee, and hee pray mee to let some friends cast up the Account between us, who do so, and finde it due, and thereupon hee doth promise to pay mee part of it before the next Tearm, and the residue in a reasonable time after; this is a good consideration, and if hee pay not that part before the Tearm, I may have this Action. Croo. 3. part 50.

Infant.

If an Infant take up wares of mee, and promise to pay mee such a day, but dye before the day, and the Executor desires time to forbear my Suit till such a day, intending to sue, and hee will pay mee, or give mee security for my mony; this is not a good contract to ground an Action upon. But if an Infant at his full age promise to pay a debt due in his nonage, this is recoverable of him, or of his Executor if hee dye. Croo. 1. 127. last publisht.

Marriage.

If one promise mee, that in consideration I will marry her, that shee will marry mee; this is a good and binding contract, and hath in it mutual Assumpsits, on which Actions may lye. Sciles 295.

Upon a Bargain. Property altered by sale.

If one sell mee a Horse, or Goods, by word of mouth, and I give him, or promise him nothing for it, this is void, and will not alter the property of it. But if one sell mee a Horse, or any other thing for mony, or any other valuable consideration, and the same thing is to be delivered to mee at a day certain, and by our agreement a day is set for the payment

of

of the mony, or all, or part of the mony is paid in hand; or I give earnest mony (where it bee but a penny) to the seller, or I take the thing bought into my possession by agreement, where no mony is paid, earnest given, or payed for the payment of the mony; in all these Cases there is a good bargain and sale of the thing to alter the property thereof, and in the first Case I may have an Action for the thing, and the seller for his mony; in the second Case I may sue for, and recover the thing bought; in the third Case I may sue for the thing bought, and the seller for the residue of his mony; in the fourth Case we may have reciprocal remedies one against another; and in the last Case the seller may sue for his mony.

But if one buy a horse of me, or any other thing, and no mony is paid nor earnest given, nor day set for the payment thereof, nor the thing delivered; in these Cases no Action will lye for the mony, or for the thing sold, but I may sell it to another. Plow. 302. 309. So if I promise to pay one mony, to give him a horse, to build him a house, or the like, and no recompence is appointed to mee for the doing of it; these are void promises, and no Action will lye upon them. *Nudum pactum.*

So if I promise to another twenty pounds, because hee is my kinsman, or Acquaintance; this is no good consideration, but a Nudum Pactum. Plow. 308. 309.

If I have an Execution against a man, and promise the Sherift if hee will arrest him, that I will pay him his due Fees according to the Statute; this is a good consideration and promise, upon which the Sherift may bring his Action. Croo. last publishe 654.

If one promise mee that in consideration that I will use my indeavour with his Father to assure such Land, that hee will give mee twenty pound, if I procure him to make such assurance; this is a good promise and consideration; and if I procure him to do it, I may have this Action for the mony. Croo. last publishe 606.

If one sell mee a house for years, for a summe of mony, or for a Mine; this is a good Contract, on which an Action may arise; yea albeit there be a Lease for life of the Land in being. Keiw. 69. Coo. 8. 94. Coo. 2. 35. Consideration valuable.

If one that illegally arrests, shall promise in consideration of his discharge thereof, to pay so much; it seems this promise will not binde, for the consideration is not valuable. Croo. last publishe 372. Not valuable.

If I promise in consideration of a surrender to bee made to me of such Land to pay ten pound, and a Surrender indeed to mee made; but it is not a good Surrender in law, this is no good consideration to give an Action upon the Assumpsit. Hill. 37 Eliz. B. Rosley and Estcomb. Croo. last publishe 489. 488. A Surrender not good. Part 9.

If one bee in debt to mee a hundred pounds, and for the satisfaction of it, deliver mee divers goods in specie to the value of the Debt, And after I call upon him for my mony, and he tells me he cannot pay it, upon this consideration I will forbear for a certain time, that he pay me such a day; this is a good consideration. Forbearance.

If I buy Land, Ware, or Cattle of a man for money, and he promise to make mee an assurance, or deliver the Ware, or Cattle by a day, and do not so, or sell it to another; I may have this Action against him. Hob. 4. Dyer. 22. Coo. 2. 30. Old Book of Entries. 6. Land or Goods sold.

If one in consideration that I will do all his commands honestly and truly for a year, promise to pay mee ten pounds; this is a good Promise. Keiw. 191. To serve another a year.

If I bee seized of Coppy-hold Land in Fee, and amerce it to a hundred To suffer a Coppy-hold to discend.

To suffer a Coppy-hold to discend.

hundred pound and dying very sick, I make W. L. my Executor, and declaring my mind to him to surrender it, to the use of my Executor, to enable him the better to pay the debt, and L. S. (being Heir to the Coppy-hold) persuades me not to surrender, but to suffer the Coppy-hold to discend to him, and he assumes to pay the hundred pound to L. S. This is a good consideration to give an Action to the Executor. Hill. 9. Jac. Grays Case.

Upon a bargain of wares.

If I buy any wares of another for so much money, or promise so much for them, he may have this Action for his money, March. Rep. 77. 16. Car. 1. B. R.

Assignment of a Statute.

If I have a Recognisance chargeable upon land, and the terr. Tenant in consideration that I will assign the Statute to him by way of discharge, promise money to me; this is a good consideration. But if it were to assign it to a stranger, it were not good, for that were maintenance. Adjudged. Pasche. 38. Eliz. B. R. Barrow and Green.

Unlawful consideration.

To deliver anothers goods out of my possession.

If one be indebted to me, and for payment thereof deliver me goods, and after, another man desires me to deliver him the goods, and he will pay me the debt; this is good. Brownl. and Goldsb. 3.

Not to prove a Will, nor joyne in execution.

If one Executor promise to another, that in consideration he will forbear to joyn in the probate of the Will of I. S. and release to the other all the execution of the Will of the Testator, to pay to the other Executor so much money when he comes to such a place; this is a good consideration and promise, upon which the party to whom it is made, may have this Action when he comes to the place. Bulstr. 1. parr. 185.

To help a man to get his pardon.

If one have killed a man, and he pray me to use all means to get his pardon, and I labour much in it, and for this he doth promise to pay me one hundred pounds upon request, this is good. Brownl. and Goldsb. 7. 8.

To grant one the half profit of a Ship.

If one be going forth with a Ship in a voyage, and grant to another the half of his gain which he shall have by the voyage, and the other in consideration hereof doth promise that he will bear the half charge of the losses which he shall have by the voyage, and to pay him the same upon request; In this case the promise was resolved to be certain and good enough. Bulstr. 1. part 202.

Of a debt already due. Consideration unvaluable.

If one in consideration that he doth owe me twenty pounds for Rent, promise to pay it me such a day; this is not a good consideration. And yet if it be in consideration of the forbearance of such a debt, this is good. Croo. 1. part 250.

To enjoy an Herbage.

If one promise in consideration that he may enjoy the herbage of such a parke for three years, that he will pay one hundred pounds, this is a good consideration and promise. Croo. 1. part 250.

To forbear a Releise.

If I seise goods under pretence of a releif due to me, and the owner pray me to forbear sute for it, and promise me that if I will so do, and cause it appear to A. and B. his Brothers, that the same is due, that he will pay me such a day; this is good. Bendlows 180. 181.

Forbearance of Sute.

Part. 10.

If my husband were indebted to I. S. and after his death, I having notice of it, and being no Executrix to him, and hearing that he intends to sue me, request him to forbear till Michaelmas, and then promise to pay him; this will not bear an Action; But if I be Executrix to my husband, it is otherwise. Noys Rep. 81.

The consideration of a promise was, so that daret diem solutionis super se assumpsit, and did not say in his Count, that he had given day, and it was adjudged no good consideration. But if the consideration be, quod cum indebitatus, &c. This is good, for it implies a consideration in it self. Goldsb. Rep. 101.

If

If I and my Testator have delivered wares to I. T. and I. H. ad computum inde reddend. by I. T. and after this I. T. goeth beyond Sea, and the Testator dieth, and then I. T. sends into England one hundred kintalls of wood &c. to satisfy mée of my account, part of this came to the hands of A. B. who delivers to mée a part of it in satisfaction of my Account &c. A. B. assumed that if I would forbear I. T. for the residue till such a time, that he would satisfye mée all that should appear to bée due upon the Account; this is a good consideration and promise. Noy 8.

If one owe mée money on an Obligation, and I intend to sue him, and he in consideration that I will defer the payment of the money, and not sue him upon the Obligation for that debt, doth assume to pay it to mée; this is a good consideration: And deferring here shall be intended all the life time of the Obliged; And that if he sue him sooner upon the Obligation, an Action of the Case lieth, Noys Rep. 83.

If A. be indebted to B. in twenty pounds, and C. is indebted to A. thirty pounds, and A. in satisfaction of the debt he oweth to B. assigneth the debt of thirty pounds which C. oweth to him, and makes him a letter of Attorney to sue in his name; and A. and B. do acquaint C. with this agreement, and C. promiseth to B. in consideration that he will forbear till such a day, that he will pay him the money; this is not good; As where Executors that have not Assets, promise to pay a debt of the Testator. And as where I deliver goods to my servant to deliver over to I. S. and I. S. promise my servant, that in consideration he will deliver them to him, he will give him so much money; this is no consideration except they be delivered accordingly, for these are only Authorities counterman-dible at all times, Winches Rep. 8. Coo. 9. Banes Case.

If I say to one, do not trouble mée, and I will give thée so much; this is not good, so give mée time &c. this is no good assumpsit. So an Infant within age promised to pay money, he makes an Executor, and dyes within age; the Executor saith to him to whom this promise is made, forbear and I will pay you, an Action will not lye upon this against the Executor, For the contract was void, see Chap. 4 Sect. 4. part 4. Forbearance without cause of Sute.

If the consideration be to forbear to sue, it seems this shall be taken but for a time and so not good. But if it be not to sue, this shall be for ever, and good. And Walmsly held, That if the Plaintiff say, I will forbear to sue, so you will promise to pay mée, and upon this, he doth promise to pay, in this case hée must forbear him for ever. But if the Defendant onely speak the words thus. If you will forbear to sue, I will promise to pay you; and the Plaintiff agrees, and forbears a certain time, he may sue afterwards. Owens Rep. 110.

If one doth promise to another, that if he will defer the payment of a Bond in which A. is bound to him, and will not implead him upon it, that he will pay him: This is not good, because he doth not say he shall defer it till such a time. One promiseth to pay so much for a Lease at will; this is not good. Mich. 12. Jac. Kebles Case. Pasche. 8. Jac. Austins Case. A man promiseth that in consideration he will forbear another; he will pay it, and no time set, is no good consideration. Trin. 38. Eliz. A man doth promise quod non implacitabit, and avers quod non implacitavit; this for incertainty, is no valuable consideration. And if there be consideration at the time, or no cause of Action, the forbearance afterwards will not make it Actionable. A consideration to forbear for a little time is not good. And yet a consideration to forbear for a reasonable time, some hold to be good. And so in the other Case, if one hath forborn a reasonable time; But if the consideration be that he shall never implead him Incertainty in the Consideration.

for the debt, this is good. And if hee do sue him after for this debt, the other may have a special Action upon the Case, for suing of him upon that cause. And by Dodridge, If an Obligation bee forfeit, and I say to the Obligee, do not sue the Obliger, or do not implead him, and I will, &c. an Action upon the Case lyes against mee if I do. Popham 183. Hetleys Rep. 62.

Assumpsit in Law.

Payment of money.

If I buy of another a Horse for a peece of gold of two and twenty shillings, to bee then paid in hand, and for eleven pound to bee paid at my day of death, or marriage, which shall first happen for payment of which eleven pound, I shall bring one sufficient man to him to bee bound with mee to him, and he in consideration hereof, assumed to deliver the Horse to mee, when hee shall bee requested; this is a good contract, and the consideration being pursued, the promise may bee actionable, not being performed. Brownl. and Goldsb. 11.

Loan of mony.

If one in consideration that I lend him mony, doth promise to pay it to mee at a day certain; this is a good consideration and promise. Brownl. 2. part 40.

Delivery of a pledge.

If I promise to one that hath a pawn of mine for a debt, that if hee will deliver it to mee, I will pay him the debt; this is a good consideration and promise. Owens Rep. 123.

Marriage.

If one promise mee, that if I marry M. A. with the assent of her Father, that hee will give her twenty pound; this is a good consideration. Adjudged. Heyley 50.

Executor. Averment of Assets.

If I sell wares to one for mony, and hee dye, and after I being about to sue the Executor, hee doth own the debt, and in consideration I will forbear it till such a time, he promise to pay it; this is a good consideration and promise. And in this case an Averment of Assets is not needful. Bulstr. 2. 278. Nor is it necessary to shew how the first debt grew due. Bulstr. 2. part 91.

Consideration to charge an Executor, &c. Forbearance *Paululum temporis.*

In consideration that the Testator was indebted, to promise to pay at two paies is not good; But in consideration that the Testator was indebted, and you will forbear, is a good consideration. That you will forbear paululum temporis, is not good, without saying for a day, &c. as is adjudged. Nor is it sufficient in consideration that the Testator was indebted, or that hee made appear the debt is due. Hetleys Rep. 1. 8. 11. Coo. 9. 94. and 6. 41. And yet see that in consideration, that per parum tempus deferret solutionem, was held a good consideration. Leonards Rep. pl. 80.

Incertainty.

If it be so, there bee a Suit in being between A. a Tenant, and B. Lord of a Manor about Common, and another for a Jugge of Beer, and in consideration that Palmer having now brought his Action against him, shall defend their Suit in maintenance of their Title of Common, hee doth assume immediately after judgement given, to pay him half his costs, or forty pound; this is a good consideration and promise. Hetleys Rep. 4. 11.

Consideration of a Jug of Beer.

If I say to a Schoolmaster, teach such a one, and I will give you so much for your paines; this is a good and binding promise. Bulstr. 2. 278, 279. So if I say to a Mason, build such a house, and I will give you so much mony for it.

To teach one a Scholar.

The Defendant in consideration that the Plaintiffs wife, when shee was sole, would take the Plaintiff to her husband, hee did promise to assure her such an estate in Land for her life, accordingly shee did take him to husband, and the husband and wife brought this Action. And it was adjudged to lye. So if one say to a Chirurgion, cure such a one, and I will pay you for the cure. Or deliver to such a Merchant so many Cloths,

Marriage.

Cure such a sick body.

Cloths, for which if hee do not pay you, I will. Bulstr. 2. 270.

If one in consideration that I have delivered into his hands divers Merchandizes, promise to pay mee so much mony; it seems this is not a good consideration, for it may bee his own goods. Hetleys Rep. 62. But if it were in consideration that I had sold and delivered them. contra. — Delivery of wares sold. Consideration past.

If one in consideration of writings belonging to mine own Land delivered to mee, make mee a promise, this is not good, for the consideration is not valuable to give mee mine own writings. Owens Rep. 123. — Delivery of my own writings.

If I promise to a woman in consideration that shee marry mee, that if after the Marriage shee out-live mee, that I will leave her worth a hundred pound; this is a good promise. And by the better opinion, the inter-marriage after is not released in Law, but shall continue, and the woman may have Action upon it. Huttons Rep. 17. 5. Co. 8. 136. contra. — Marriage. Extinguishment of a promise.

If a Statute made to mee be forfeited, or I do pretend so, and about to sue upon it, and the Conusor in consideration that I will forbear it, promise to pay mee so much; this is good, and in my Suit I shall not need precisely to shew how it was broken, but in some general Tearms onely. Bulstr. 2. part 263. — Forbearance.

An Assumpsit will not lye for a Rent; or upon an Obligation, as that where one was indebted to him so much for Rent, or so much on an Obligation, that hee promised to pay him; this will not lye. Huttons Rep. 34. 35. — For Rent due, or Obligation.

If I speak to a Taylor to provide mee such things to make a garment, and assume to pay for it, and the making of it, as it shall bee worth; this is a good promise. — Taylor to make Cloths.

If one hath a Dogg that hee knows hath been used to worry and kill Sheep, and hee hath killed some of mine. And the Defendant in consideration thereof doth promise to make mee satisfaction, &c. this is a good promise in it self, and hath a consideration in it. Huttons Rep. 106. — To satisfie mee for a Sheep killed.

If my wife have a Rent charge for her life, and the Tenant of the Land charged, in consideration that the Rent is behinde, &c. promise to pay it to mee, this is a good promise and consideration. Leonards Rep. 293. pl. 401. — For a Rent due

If one in consideration that I will give credit to E. C. then his Servant, for any thing that hee shall deal for, to his use with mee, promiseth that hee will see mee contented, that which E. shall deal for with mee, to his use any way, when hee, after it shall become due shall be requested; this is good. But here must bee a Request before any Action can bee brought. Brownl. and Goldsb. 13. — Engagement for another. Part 11.

If A. owe mee eight pound ten shillings for Beer, and dye, and after his death, I ask my mony of her, and shee in consideration that I will serve her with Beer, promise to pay mee the eight pound ten shillings, and for the rest of the Beer at such a day certain; and I do serve her with Beer, and give her time for the payment of the eight pound ten shillings, and for the other Beer delivered to her; this is a good consideration and promise, and upon this done I may sue upon it. Adjudged. Hatch and Capells Case. Godb. Rep. pl. 296. M. 11 Jac. Co. B. — Forbearance. Sale of Goods. For Bread and Beer.

If one bee indebted to mee twenty pound by Bill, and in consideration that I will faithfully promise to deliver the said Bill to him, hee doth assume to finde two sufficient Sureties to enter into Bond to mee for the payment of it; this is a good consideration and promise. Noys Rep. 61. — To deliver a Bill for payment of mony.

If one have a Lease for years, the Reversion whereof is in I. W. and the Tenant (being in talk of sale of it) in consideration that I will procure — To get a License to make a Lease.

Quantum meruit.

cure a License from I. W. to him, hee doth assume to pay mee as much as I shall disburse and deserve therefore; this is a good consideration and promise, albeit hee might have sold it without the License of I. W. Huttons Rep. 39.

Consideration unvaluable.

If I promise, that whereas I am obliged to A. if you will procure B. (who is a stranger) to make a Release thereof to mee, I will pay you forty pound, in this case, albeit it bee done at my instance, no Action lyeth. Huttons Rep. 39.

Consideration valuable.

It is said to have been adjudged, that if one promise forty pound to another, if hee can procure the assent of the mother of a woman, though hee may do it without such consent, yet it is a good consideration. Huttons Rep. 39.

Not to sell a pawn, but forbear.

If one pawn goods to mee, and I threaten to sell the goods if hee will not pay mee my mony, and I. S. standing by us, saith unto mee, keep the goods until such a time by you, without sale of them, and if hee do not then pay you, I will then pay you the mony, and take the goods; this is a good promise and consideration, and if I pursue the consideration, and hee break his promise, I may have this Action. Bulstr. 3. part 68.

Not to sell goods I am buying.

So if one have wares, and purpose to sell them, another being desirous to buy them, and I say to him, do not sell them away, but tarry till such a day, and then I will pay you for them: this is good in the consideration and promise both, for by this hee is hindred in the sale thereof. Bulstr. 3. 68.

Discharge my Debt to another.

If two bee bound in a Bond for the debt of another, and it is forfeited, and one of them say to the other, pay you all the debt, and I will pay you the one half again; this is a good consideration and promise, and being pursued, will maintain the Action. Bulstr. 3. part 162.

To solicite Causes.

If one retain mee to bee his Solicitor, for the prosecuting or defending of some of his Law Causes, and promises to give mee so much, &c. This is a good Contract, upon which I may have this Action. Croo. 1. last publisht 760.

Borrowing of a Horse.

If one borrow my Mare to plow his ground, and promise the re-delivery of her; this is good, and not performed, actionable: And if hee work her so excessively, that shee dye, this is actionable as a Miskeasance. Goldsb. and Brownl. 17.

To set one arrested at liberty.

If A. bee in prison at my Suit, and B. in consideration that I will set him at liberty, give mee his word that hee shall pay the mony at such a day certain; To make this a good Suit, somewhat must appear of the Cause and Warrant of the Arrest, or else it seems it will not bee actionable. If a man be unlawfully arrested, and another in consideration of the setting of him at liberty, doth promise to pay the mony; this it seems is not good. Godb. Rep. pl. 452. and Noys Rep. 47.

Unlawful Arrest.

Not to implead. To forbear. Part 12.

If A. assume to B. that where C. was indebted to him forty pound, that if hee would not implead C. that if the mony were not paid at such a day, that then A. would pay the mony; and this is held good. Owens Rep. 29.

To make special Bayliffs of my naming.

If a Writ come to mee that am a Sheriff to arrest A. at the Suit of B. and B. pray mee to make one Russel his friend a special Bayliff in it, and in consideration thereof, assume, that if A. escape, hee shall take no advantage against mee; this is good, and if Russel do arrest him, and let him escape, and the Plaintiff sue mee for it, I may sue him upon this promise. Owens Rep. 97.

Forbearance.

The wife of I. S. was Executrix to A. B. and had Assets to satisfie all Debts and Legacies; shee dyes, and the goods remain in her husbands hands,

hands, and I (being a Legatee) demand my Legacy of him, and hee thereupon saith to mee, Forbear till Michaelmas, and I will pay you; it was demurred if a good consideration, and it was adjudged to bee no good consideration. And there these cases said to bee adjudged, Godfreys Case. Godfrey laid claim to Coppy-hold Land; and the Coppy-holder in possession said to him, If the opinion of the Lord Cook bee, that Godfrey hath a good title to it, I will surrender it to him, and for not surrender, the Action was brought, and it was adjudged, that the staying of the Suit was a sufficient consideration to have this Action.

Where I have lent to another twenty pound, and hee doth afterwards in consideration thereof, assume, that hee at the end of the year will lend mee twenty pound for a year, or pay mee five pound; this is not a good consideration. Owens Rep. 144. Adjudged. And it seems by one Judge to have been held, that upon these words, Do such a thing, and I will give you five pound; no Action will lye. So that where I say to one, in consideration you will serve mee for a year, I will give you five pounds, that this is no cause of Action. Owens Rep. 144. But the Law seems otherwise in both Cases. Consideration past.

If one bee indebten to mee a hundred pound on an Obligation, and I, S. in consideration that I at his request will forbear to sue him, that if the Obliger do not pay it, hee will; the promise and consideration is good. Adjudged. Mayes and Sidleys Case. Huttons Rep. 47. And there this difference was taken, where the promise doth appear to bee such, that it is no benefit at all to him in whose behalf it is made, and was requested; as forbearance for an hour, or a little time, there it is not good. But where it is general, and not limitted to any time, that shall bee taken for a total forbearance, or at least a forbeatance for a convenient time, which the Court must judge; And if there bee a subsequent forbearance for such a reasonable time, and it bee set forth in the pleading, the Action is well brought. Huttons Rep. 46, 47. Bulstr. 3. 206. Forbearance. How a promise shall be taken.

It was one Palmers Case, as it was there said, Forbear him a little while, and if hee do not pay it, I will. It was adjudged for the Plaintiff, Banco Regis. But afterwards it was by a Writ of Error reversed. And if in these cases hee doth not forbear a convenient time after, it is no good consideration. Huttons Rep. 46, 47. Forbearance per paululum tempus, and per tempus breve, are alike incertain; but tempus conveniens is good. Bulstr. 1. part 92. 14 H.8. 19, 20. Pasche 8 Jac. B. R. Sackford and Phillips.

If the Testator had owed mee mony, and the Executor in consideration that I will forbear the debt for a reasonable time, assumed to pay it, and I did thereupon forbear three months; this was adjudged good. Huttons Rep. 27. 108 Bulstr. 1. part 41. Bulstr. 3. 106, 107.

If one promise mee in consideration that I will forbear him for a little small time, (viz.) for a fortnight, or thereabouts, that hee will pay mee the debt; and I forbear him two years, I may have the Action upon this promise. Adjudged. Bulstr. 3. part 41.

If one in consideration that I in a short time will deliver him two fat Oxen, hee will in a short time pay mee 10 l. for the Oxen; this is not good. Adjudged. Bulstr. 1. part 97. So if I sell a Horse to another for so much as hee shall value him. So I sell a Horse for ten pound to bee paid mee per breve tempus; this is incertain and void. Bulstr. 1. part 92. Incertainty.

If one that hath the possession of certain goods, deliver them to another, and in consideration thereof, hee to whom the delivery is made, doth promise to re-deliver them unto the Bayliff, or to pay so much mony, Delivery of goods.

this

this is a good consideration, when hee that makes the delivery hath a lawful property or title. Leonard Rep. pl. 303.

For a thing sold that cannot bee had.

If a Contract bee to pay mony for Tithes, or any other thing, and the thing contracted for cannot pass, nor by this Contract bee had, there no Action will lye for the mony, for a man hath nothing for his mony. Bulstr. 1. part 111, 112.

Infant. Consideration void.

If one within age buy Velvet, and other wares of mee, and then dye, and after his death I demand the debt of his Executor, and hee say, forbear it till Michaelmas, and I will pay you then, or put in sufficient security for it. And it was adjudged against the Plaintiff. Leonards Rep. pl. 156.

Forbearance.

It is said to bee the Lord Greys Case. 9 Eliz. his Father was indebted to divers Merchants upon simple Contracts, and died, seized of divers Lands which discended to his Son and Heir in Fee, the Creditors demanded their debts of the Heir, who answered to them, if my Father were indebted to you, I will pay it, and upon that promise an Action was adjudged to lye, although the Heir by Law were not chargeable.

Part 13.

Consideration past.

If I request another to do a thing for mee, and make him no promise, and after hee tells mee hee hath done it, and then I promise to pay him for it; this is a good promise and consideration, although the promise go not with the request. Otherwise it is where a man doth mee a courtesie without any request. Brownl. and Goldsb. 8.

To make a Lease for years

If I make a Lease to A. for years, and after request A. to grant it for years to B. and promise something for this at the time, or before the grant, there it may bee good, but if it be made after the grant, it is no good consideration. Godb. Rep. pl. 19.

If one promise to mee, that if I will make him a Lease of such Land for one and twenty years at such a Rent, for a Rent of ten pound a year, hee will give mee a Horse; this is good, and I may have this Action upon it. Bulstr. 3. 31.

Provision for a sick man.

If one bee fallen sick in my house, being an Inne, and I. S. say to mee, provide for him such necessaries as hee shall want, and I will see you paid for it, or I will pay you for it; this is a good consideration and promise. And in my Suit brought upon it, I shall not need to shew what necessaries in particular I did lay out for him, but in general, it is sufficient that I provided necessaries amounting to so much. Bulstr. 3. 31. Adjudged.

Physician to heal a sick person.

So if one say to mee a Physician, that if I cure such a one of a Fistilow, hee will give mee so much for my pains. Bulstr. 3. 31.

Payment of mony.

If I bee bound in an obligation to pay another fifty pound on a day to come, and afterwards after the same is due, in consideration that I at his request will pay unto one Playsford to his use fifty pound upon the tenth day of December following, in satisfaction of the said Debt, hee doth assume and promise to mee to deliver up the same obligation to mee, when hee shall bee thereunto requested, to be cancelled; this is a good consideration and promise. But in an Action brought upon it, there must be a special Request averred, or it will not lye. Bulstr. 3. 298.

Averment. Request.

And so it is upon promises of all other things generally, to bee done upon Request. Idem.

About Suits of Law.

If I have a Capias utlagat. against the body and goods of I. S. for fifty pound owing to mee by him, which I am about to execute, and W. S. (on his behalf) doth request mee to stay the execution of the Writ till such a day, and if I. S. shall not pay mee my fifty pound that day, in consideration of such stay of the execution of the said Writ, and of two shillings

Forbearance.

four

four pence to be given to him by me for the renewing of the Writ. W. S. doth promise me, that if I. S. pay me not the fifty pound at the day, that he will pay me. Yelverton 19.

If I have a Writ of Execution against one, and I assume to the Sheriff, that if he will arrest him, and lay him in Gaol, I will save him harmless; it seems this is not a sufficient consideration for it, but his office, and what he is bound to do. Hetleys Rep. 175, 176. — Arrest of a man upon a Writ.

If I have a Suit against A. and a Capias to take his body, and desire a Warrant of the Sheriff to C. and D. as special Bayliffs, and promise the Sheriff, that if they arrest him, and after suffer him to escape, that I will save the Sheriff harmless for the escape; this is good, and if I sue him for the escape, he may sue me on the promise. Leonards Rep. pl. 130. — To make special Bayliffs at my Request.

This Agreement is made between mee and another, That whereas I have sold to him a thousand couple of Newland Fishes to his use, and in consideration that he should ship, and should bring and carry the adventure of them from Bristow, to the Port of St. Lucar, and shall carry back the value of them to London, or Bristow, according to the use of Merchants, he doth promise upon the arrival of the Fish in the Port of St. Lucar, that he will give me a hundred and twelve pound; this is a good Agreement. Leonards Rep. 335. — About Merchants. — To carry or bring the adventure of goods.

If I sue one in the Prerogative Court, to disprove a pretended Will, whereby Legacies are given to me, which Will he labours to have proved; and he in consideration that I will no further prosecute therein, promise me a hundred pound; this consideration and promise is good. Leonards Rep. pl. 159. — Not to prosecute the probate of a Will.

A. was bound to B. in twenty pound, and afterwards A. promised to B. that in consideration the said A. should not be damnified by reason of the said Bond, to give the said B. ten pound, and upon that promise B. brought an Action of the Case, and shewed that the Defendant was not damnified by reason of the said Bond; and it was adjudged that the Action was not maintainable, because hee did not shew that hee had released, or otherwise discharged the Defendant of the Bond. Leonards Rep. pl. 159. — How it shall be taken.

If one retain mee to go from London to Paris to merchandize divers goods for him, and promise mee so much as shall content mee for it, and to give mee all such money as I shall lay out in the walk, and I say so much shall content mee for my pains; in this case the Action will lye for mee clearly. But I must lay in my declaration a special Notice and Request of this Contentment. Leonards Rep. 167. — About Merchants.

If there bee a question between mee and another man about a Rent, and hee say to mee, if I will shew him any deed by which it shall appear that hee ought to pay mee such a Rent, that hee will pay what is due for the time past, and hereafter from time to time; this is a good promise. Leonards Rep. pl. 240. — To prove a thing is due.

If I and another talk together of his having of all my Iron at such a Furnace of mine, paying forty shillings a Ton for it, and I assume to him hee shall have it; And hee assume to mee that hee will have it all, and for it pay according to the Rate aforesaid; these are good mutual promises, on which Actions may bee brought. Yelverton 133. And therein no other consideration is necessary to be alledged, or set forth to be performed. Bendl. 250. — Part 14. — Reciprocal Promises. Consideration needless.

If there bee a question between mee and another Son, (but not Heir, nor Executor of I. S.) about the profits of Lands taken by I. S. and I intending, and having begun a Suit in Chancery against the Son about it; he promiseth — Forbearance of a Suit causeless

promiseth mee, that so as I will stay my Suit, and shall prove that his Father took the profits, or had the possession of the Lands under the Title of my Father, that hee will pay mee for the profits of the Land, in this Case, and upon this Assumpsit, no Action will lye, for lack of good consideration; for it appeareth not how the Son is chargeable, and if so, the Suit in Chancery unjust, and so no consideration. But if the Suit bee for Evidences, it may bee good. But this is for a personal wrong, which neither the Heir nor Executor is to bee charged with. Adjudged. Croo. 1. last publisht. 206, 207.

Heir, Executor.

Actions personal dyes with the person.

If an Executor owe for the Testator a debt of two hundred pound to I. S. and I. S. is content, and doth agree with him to take a hundred pound, and to take it by twenty pound a year; and in consideration of this, the said I. S. doth assume so to pay it; in this there are reciprocal promises. Yelverton 11.

Promise against promise, a good consideration.

If one promise to a woman, that in consideration shee will engage to marry with him, hee will marry with her: this is a mutual promise, and an Action lyes for either of them against the other for the breach of it. Siles Regist. 32.

Reciprocal Promises.

If one promise to mee (a Carpenter) ten pound such a day, to build him a house, and I do promise him to build him a house, upon this Contract, either of us may sue the other at any time before the work done. Dyer 21. Plow. 5. 3 H. 6. 36.

Reciprocal Promises.

If one promise for ten pound paid him by mee in hand, to build mee a house; this is a conditional promise, and the mony must bee paid to mee ere the promise will have virtue to produce an Action. And it is not like, as where one promiseth to build an house, and the other doth promise ten pound; they are reciprocal, and have equal remedy. And

A Conditional Promise.

If one be indebted to mee twenty pound by Bill, and I promise to deliver him the Bill, and hee promise mee to bring two sufficient Sureties to give Bond for the mony by a day; in this case hee may sue mee and I him. And here needs no Averment of the one side to enable the Suit. And so in all such Reciprocal Promises. But if the promise bee conditional. Contra. Adjudged. Mich. 38. 39 Eliz. B. R. Gower and Capper.

Reciprocal Promises.

Averment.

A. sells a Cow to B, for five pound, and assumes to deliver her to him at a certain day, And at the same time B. assumes to A. to pay him the five pound for the said Cow at the said day, A. brings an Assumpsit for the five pound not paid, and doth not averre the delivery of the Cow, and it is good enough. But the writ must mention both the Assumpsits, for the one of them is the consideration of the other, and either of them may have Action against the other; the one for the mony, the other for the Cow. Hobb. Rep. 88. Jenkins Century. 7. Case 47.

Pleading.

So in Assumpsit by a Servant for his wages, and of the Master for his service, where the Assumpsits are mutual. But in all cases these Assumpsits must bee made at one and the same time; for if they bee made one after another, it will bee but Nudum pactum. Jenkins Century 7. Case 47.

If one sell to mee all his blades of Corn on such a ground, the same being sowed with Wheat and Rye, and now almost ripe, the Tithes excepted, for fourteen pound to bee paid at such a day to come, this is a good bargain, and if I take the Corn (as I may) hee may either have an Action of Debt, or this special Action of the Case at his choice against mee for the mony. Croo. 4. Slades Case. 92.

Executory Contract.

If A. B. in consideration of mony paid by mee to him, assume to assure

sure Coppy-hold-Land to mee in such manner, as one Drables should advise, and hée advise that A. B. shall at the next Court surrender it to the use of mée and my Heirs, and shall enter into an obligation of forty pounds for the enjoying of it; this is a good consideration and promise; But in the Suit it may not bée alledged a breach of the promise, by not entry into the obligation; for this is not of the Assumpsit, and A. B. is not bound to it; and therefore no damages is to bee given for that. Croo. 2. 115. Promise to assure Land. Part 15. Consideration good, or not. How it shall be taken.

If one bee indebted to mee fifteen pound, and hée promise mee to pay it by five and twenty shillings a quarter, and to enter into bond upon request for the payment thereof; this promise shews it to bée good, albeit no summe certain bée named for the Bond, and that it shall bee in double the summe to bée forfeited; And I must bée sure to make my request before any day of payment come. Croo. 2. 116. Certainty. How to bee taken.

If A. B. and I bée speaking together of an obligation, wherein hée and his Father are bound to Newbold, and in consideration that I at his request will pay to Newbold threescore pound in discharge thereof before such a day, hée doth promise to assure mee such a Coppy-hold for one and twenty years, by such assurance as Edward Drable shall advise; this is a good consideration and promise. And if that which is executory in it bée duly pursued, may warrant this Action. Croo. 2. 194, 195. To pay mony. Promise to assure Land. Certainty.

If one in an Assumpsit declare, that the Defendant being indebted to him, assumed to pay, &c. and doth not shew how the debt grew due, viz. for Rent on a Lease, or by Specialty, or by Record, or by Recognisance, or the like; this is not good, for if it arise by any of these means, a general Assumpsit lyes not; But if it bée that hée being indebted for wares sold upon a Loan, or upon any such like precedent Contract, assumed to pay, &c. this is good. Croo. 2. 206, 207, 213, 214. If hee declare, that where hee was indebted to the Plaintiff forty pound, viz, pro diversis denariorum summis ei prestitis, ac pro diversis, de eodem Richardo receptis & habitis & pro quadam pecuniæ summa, by the Plaintiff at the Defendants request to one John Amias paid for dyet, assumed to the Plaintiff, that hée would pay the said forty pound to him ante inceptionem proximi Itineris of the Plaintiff to London; this it seems is good, albeit so generally alledged; But if hee sue upon it, hee must bee sure to set forth the time of his next Journey to London, &c. Croo. 2. 246. Croo. 2. 69. A. declared that hee and B. accounted for divers summs of mony received by B. that hee was found to bee in Arrearages ten pound, and in consideration thereof, assumed to pay it such a day; this was adjudged good without any forbearing of Suit, or other matter in the promise. For a Rent due. Pleading. Pleading. Upon an Account.

If one did assume to my wife in her Widdow-hood, that if shée would marry Thomas Mason, hee would pay her yearly after his death, during her life, forty shillings, if shée did marry him; a good Action lyes for this forty shillings a year. Croo. 2. 222. Promise of mony on a marriage to a wife.

If I. S. promise my wife during Coverture, in consideration that shée will cure such a wound, that hée will pay her ten pound, this is good and actionable, and I and my wife may sue together for it. Croo. 2. 205. Assumpsit to a Feme Covert.

I have bought of a Merchant a parcel of good Gumme, eight and twenty hundred weight, at three pound eight shillings the hundred weight, and paid him in white Holland, at the rate of one shilling four pence the Ell: And wée speak of another parcel of Gumme hee hath upon the Sea to come to London in May following, which hee affirmed to bee as good as that I had bought, and I thereupon promise him, that Between Merchants.

 if

Part 16.

if the parcel coming exceed not two thousand weight, I will within four months after the delivery thereof to I. S. my Brother, deliver to the Merchant so much Dollars, according to the rate of five shillings four pence the Dollar, as the same Summe shall amount unto, after the rate of three pound eight shillings the hundred weight; and the Merchant in consideration thereof, assume to deliver to I. S. my Brother the said parcel of Gummie, when it shall come to the Port of London, so as it exceed not two thousand weight, and bee as good as the first; this is a good Contract, that being duly pursued, and rightly set forth in pleading, may give this Action on either side. Croo. 2. 185.

Reciprocal Actions.

Forbearance of a Debt. Executor.

If I lend A. money, and hee dye, and his Executor in consideration I will not sue him for the money, promise, if I will but give him day till Michaelmas, then to pay it to mee; this is a good consideration and promise, on which I may have an Action. Croo. 2. 235.

Engagement for another.

If I at the request of A. B. become bound in a recognisance with him for his appearance before the Justices of the Gaol delivery at S. and hee in consideration thereof, assume to save mee harmless from that Recognisance, &c. this is a good consideration and promise, and if hee appear not, and I bee damnified, I may have this Action. Croo. 2. 281, 282.

Engagement for a third person.

If one in consideration that I will be bound for his Son in such summs, and to such persons as hee shall desire mee, hee doth assume to save mee harmless for every such summs of money, and all such debts as I shall become bound to any person for him; this is good to binde him, and if hee do not so, I may have this Action. Croo. 2. 287.

To pay money Promise not to use a Trade.

If one in consideration of ten pound promise to make mee a Lease for one and twenty years of a house, and that hee having a house adjoyning, wherein is a shop, assume that hee will not suffer the Trade of a Joyner to bee used in the same shop during this Lease; this is good, and if hee break it, I may have this Action. Croo. 2. 326.

Common Carrier lose my goods. Assumpsit in Law.

If I deliver goods to a Common-Bargeman, that is used to carry from, and to such places, and give him two shillings for the carriage, and hee negligently lose them, I may have this Action, albeit hee make no special promise to mee about it, upon an Assumpsit in Law. Croo. 2. 330.

Delivery of Statutes, good Consideration.

If the Father of A. B. bee indebted to mee in two hundred pound, and deliver mee two Statutes from other men of four hundred pound, and promise to make mee an Assignment and Letter of Attorney, to recover and receive the debts upon the Statutes, but doth dye before it is done; and A. B. pretending himself Executor to his Father, request mee to deliver to him the Statutes, and in consideration that I will do it, promise to pay mee two hundred pound at a day; this is a good consideration, and if pursued, will make the Action good. Croo. 2. 342.

A Physician to cure one that is sick.

If I bee a Professor of Physick, or Chirurgery, and one that is sick, or hath an Infirmity, in consideration that I will at his request do my best to cure him, promise to pay mee upon request so much as I shall deserve; this is a good consideration, and if I pursue it, it will give mee this Action, for my recompence. Croo. 2. 370.

Forbearance of a Suit.

If I sue a man for debt, and another man in consideration that I will agree, and be contented to desist from further prosecution of the Suit I have to begun, and will remit the Defendant his costs, assume to pay him his money at Michaelmas next, or then to give him security to pay it at the end of six months; this is a good consideration, and if pursued and executed, will make him liable to this Action. Croo. 2. 397.

If one promise to give mee two hundred pound at his request to marry

his

his Kinswoman, and hée dye, I may have this Action against him, and recover the mony of his Executor, if hée have Assets. Croo. 2. 405. Executor chargeable.

If the Testator do promise to another, that in consideration hée will marry his Daughter, hee will pay him a hundred pound, and leave him as hee left, or gave any of his other children; this is good for both parts of the promise, and the Action will lye against the Executor, as well for this collateral promise, as for debt. Croo. 2. 418. A Marriage. Executor chargeable.

If one for such a summe of mony paid to him promise to take my Son to bee his Apprentice for seven years in such a Trade, to instruct him in the said Trade, to have meat, drink, and apparel during the said Tearm; this is good. Croo. 2. 406. To take an Apprentice for mony.

If one buy twelve weights of Barley, and assume to pay for them as much as the seller should have of any other, abating a penny onely in every bushel, the agréement is good, but if the seller sue for his mony, hée must bee sure in this Action to set forth that hee hath given notice before the Action brought for what hee had sold it. Croo. 2. 432. Certainty. Notice.

If one promise to mee who am engaged in a Suit for a Title of Common for a Jugge of Béer I gave him, and upon my promise to maintain and defend the Suit; that hée will pay mée half my charges, &c. this may bée a good consideration and promise. Huttons Rep. 89. Consideration of a Jug of Beer.

If one sue mee in an Action in any Court, and promise mée in consideration that I will give order to my Attorney to confess the Action, and suffer him to have a Judgement in the Suit, that no judgement shall be entred till such a time; this is a good consideration and promise. Hutton Rep. 63. To confesse an Action in a Suit. Promise to stay a Suit.

If I be bound by obligation to I. S. to pay mony at a day, and hée promise mée, if I pay the mony at the day, hée will deliver mee up my Bill; this is a good promise and consideration, on which I may have an Action, if I pay the mony. But if one have forfeited a Bill, and three daies after promise to the Obliger, that if hee will pay him his mony thrée daies after that hee will deliver the Bill to him, it seems this is not a good consideration. If I buy and pay for Cattle, of one in a Market, and hée keeps my Cattle, and will not deliver them; and I in consideration that hée will deliver them, promise to pay him a certain summe of mony, hée may have an Action for this. If a man bée to pay mee mony the first of May, and that day in the morning I come to him, and pray him to pay it in the morning, and I will give him five pound of it, or abate it, for hée is not bound to pay it till towards night. If one have a Judgement, and in consideration that hee will not sue Execution, the other doth promise to pay it; this is good. Huttons Rep. 76, 77. Consideration to pay my debt. Consideration unvaluable. To pay mony at the day. Forbear a Suit.

This Case was said to bée adjudged. In consideration that the Plaintiff had promised to the Defendant ten pound at a day, according to the condition of an Obligation, the Defendant promised to deliver the Obligation; that this was a good consideration. Huttons Rep. 111.

If one keep my Horse for the meat, and another comes to him, and in consideration that hee will at his request deliver the Horse to him, to the use of the owner, promise to pay the mony; this is a good consideration and promise. So it is said, if I lose my goods, and another finde them, and I promise if hee will deliver them to mee, I will pay him mony; this is said not to bée good. Huttons Rep. 101.

If one hath served mee a time, and afterwards in consideration of the service hée hath done mée, I promise him twenty shillings upon request; this is a good consideration and promise. Adjudged. So in consideration that one hath married my Daughter. So in consideration that you have Consideration past, or *Ex post facto.* Part 17.

been Surety for mee in such a debt, I promise to save you harmlesse. So it is said, in consideration that you have been Bail for mee, I promise to give you a house. And in consideration that you (being a Carpenter) have well built my house, I promise to give you five pounds. Sed quere of these two last Cases. Huttons Rep. 84, 85. But it seems these things in the declaration must bee laid to bee done at the request of the Defendant.

Delivery of Cloths.

Promise to pay for the making of it.

If a Taylor make a Suit of Apparel for I. S and I. D. request the Taylor to deliver it to him, and hee will pay for the making thereof; this is a good consideration. Huttons Rep. 111.

For tabling, promise to pay for it.

If one bee a Suitor to a Maid dwelling in my house, which hee doth afterwards marry, and hee doth then desire that his wife may continue with mee for a year longer: And after (about the middle of the year) hee doth promise, that in consideration I will suffer his wife to continue there as a sojourner for a whole year, that hee will pay mee for the whole year, as well for that which was past, as for that which was to come; it was adjudged a good consideration and promise. Bulstr. 3. 187.

Being Bail for one, he promiseth to discharge him.

If upon Request one becomes Bail for I. S. in an Action against him, if afterwards hanging this Action, hee promiseth to discharge him of it; this is good to raise the promise. Bulstr. 3. 187.

To assign the Lease, he promiseth to pay the Rent.

If one have a Lease for years of my wives Land, and another man in consideration that I will procure him to assign this Lease to him, doth promise to pay mee the Rent for all the rest of the Tearm; this is a good consideration and promise. And the husband alone may sue for it upon this promise. Leonards Rep. pl. 55.

For that the Lessee doth pay his Rents, hee promiseth hee shall injoy the Land.

If one have a Lease for years of my Land, and being sued, I do in consideration thereof, that the Lessee hath occupied the Land, and paid his Rent, promise to save him harmless against all persons for the occupation thereof, for the time past, and to come; this is a good consideration and promise. Leonards Rep. pl. 154.

Contract for another. To buy a Gelding for him, he promiseth to pay him.

If I do request one to buy such a Gelding for mee, and do promise that I will repay him again, and hee buyes this Gelding for mee accordingly, clearly hee may have an Action of the Case against mee for this mony, upon my promise, and I may take the Gelding, and before my taking of the Gelding, the property of the Gelding is not in him who bought him to my use, but in mee. Bulstr. 1. part 169.

That he will forbear the probate of a Will, he promiseth mony.

If one in consideration that another that is made an Executor of a Will, will forbear the probate of it, and release the total execution of it, that hee, when the other shall come to such a place, will pay him so much, this is good enough. Bulstr. 1. part 185.

That hee shall stay a Suit, and the other pay so much.

If I sue in Chancery I. S. for marriage-mony received by him, and hee upon this, in consideration that I will stay my Suit there, hee will pay mee a hundred pound, and deliver up a bond of forty pound which he hath; this is good, and here the Judges held the promises to bee mutual, and that the Plaintiff by this did assume to stay his Suit. Bulstr. 2. 42.

Mony for a Lease for years.

If I have a house for years, and I agree with I. S. to let it him; paying to mee forty shillings a year, and ten shillings for the last quarter, and each of us do give to the other twelve pence to perfect the bargain, and after (the same day) the Defendant in consideration of the premises, did promise to give to the Plaintiff thirty pound, and did assume to pay this afterwards. In consideration of all this, and performance of the Contract, hee made the Lease to the Defendant accordingly; this is a good consideration and promise, and hee may sue for the thirty pound. Bulstr. 2. 73.

A.

A. had a plaint against B. in the Counter in London, B. was arrested and imprisoned, and one C. a stranger to the Suit prayes mée to be Bail for B. and assumes to mée to save mée harmlesse from the Bail, after I am in Execution for the debt, but by mistake, and upon an erroneous proceeding in the Suit; in this case, if I sue, as perhaps I may, I shall have very little damage, because I was not chargeable by Law. Croo. 1. last publisht 459. To save harmlesse. Part 18.

If one bring mée a Writ of Execution (I being Sheriff) against any out of my County, and desires mée to make I. S. my special Baylift, and promise, that if the party escape, hee will take no advantage against mée for it; this is a good promise and consideration, and if hee do suffer him to escape, and the Plaintiff sue mée upon the escape, I may have this Action for it. Croo. 1. last publisht 178. 271.

M. R. hath entred into a Bond of two hundred pound to mée, and given all her goods to I. S. to pay her debts. I. S. pretends that this Bond was read to M. R. at the sealing but a hundred pound, and so said, shée being illiterate, and hée assumed to mée, that if I and two witnesses would depose before the Mayor of Lincoln, that it was read to her as an obligation of two hundred pound, that her would pay it, and wée did depose it so on a Book before the Mayor of Lincoln; this is a good consideration, and well executed, and I may sue upon it. Croo. 1. last publisht 469, 470. Consideration to make proof. Promise to pay mony.

If I dée indebted to I. S. twenty Combes of Barley, to bée delivered to him such a day, and A. B. in consideration that I will deliver it to him before the day, assume to mée to deliver it at the day to I. S. this is a good consideration to binde A. B. to deliver it over, if it bée delivered to him. Croo. 1. last publisht 883. Consideration. Delivery of goods. Promise to deliver over.

If I bargain with A. B. to sell and to deliver him a hundred and fifty stone of Wool, for a hundred and fourteen pound to bée paid at a day to come, and C. D. in consideration that I will deliver the Wool to the said A. B. became fide jussor for the said A. B. assumendo & ad tunc & ibidem promittendo to mee, to pay the same mony; this is a good Assumpsit, on which an Action may bée grounded; but I must set forth that the principal hath not paid it, being demanded, and afterwards a demand of the Surety. Croo. 2. 500. Consideration to acquit a Debtor of a Debt. Promise to be Surety for it.

If one acknowledging himself indebted to mée ten pound for divers Trespasses done to mée, which I am at the request of A. B. contented to accept of, and A. B. in consideration that I at his request will acquit and discharge the debtor of the said debt, and permit him to carry out of my house certain goods of his now there, promise to pay the ten pound at a day; this is good. But in the Suit I must shew how I acquitted it, by bée, &c. Croo. 2. 503.

If two agrée upon the sale of Land, and to stand to the ojner of a third man for the summe to bee paid, and for the assurance to bee made, and they promise the one to the other to stand to the ojner the third shall make; if hée do set down an ojner in it, they are bound to perform it, oj this Action will lye upon it. Croo. 1. last publisht 660. To abide an Award.

If the first husband of a woman put his Son to Table with mée for three years, and agree with mee to give for every year eight pound, and dye within the year. After the woman, in consideration of her natural affection to her Son, and in consideration that the Son may continue with mée during the residue of the three years, promiseth to pay mee six pound thirteen shillings four pence, for the tabling of her Son for the time past, and eight pound for every year after her shall continue with mée; Consideration of tabling to pay mony.

mee; this is a good consideration, and promise, and I may recover the whole debt formerly and after due by this Action. Croo. 1. last publisht 755, 756.

Consideration of enjoying Land to pay mony.

If one in consideration that I will permit him to enjoy such Land for a year, assume to give mee ten pound for that year; it seems no Action will lye for mee in this, albeit I do suffer him to enjoy it. Croo. 1. last publisht 859.

If I sell to another Cloth for three hundred seventy pound, the one half to bee paid within fourteen daies, and the other half at the end of three months, the first half whereof hee hath paid mee; this is a good Contract, and I may have an Action for the residue of the mony.

To forbear to sue mee for a Legacy, I promise to pay it.

If A. give a Legacy of mony to B and dye, and make his wife his Executrix, I marry this woman, and I promise B. that in consideration he will forbear to sue mee for this Legacy, promise to pay it. But my wife is dead before the promise; this consideration is void, and the promise will not binde mee, albeit I have in my hands some of the goods, for I have no right to them. Croo. 2. 257.

Consideration past. Part 19.

If I have delivered to hee Cloths for so much on a bargain; and after hee in consideration of this debt, promise to pay it mee a year hence; it is said to be adjudged good. Bulstr. 1. 85.

Deliverance of Cloth. Tabling with mee.

If one hath sojourned with mee half a year, and then I am desired by her, or a friend of hers, to let her sojourn with mee another half year, and promise to pay mee then for the whole year past, and to come; this is a good consideration to raise the Action, to recover for the whole year. Bulstr. 3. 187.

Keeping a Pawn.

If goods bee pawned to mee, and I tell a friend of the owners, that I will sell them, if hee do not bring my mony, and hee pray mee to keep them till such a day, and if hee do not pay mee then, that hee will pay mee; this is a good Contract to raise an Action. Bulstr. 3. 70.

building a house. *Nudum pactum.* Done mee a Trespass.

If I promise to another in consideration of something past, as because hee hath builded mee a house, or in recompence of such a Trespass done by him, or for that hee hath quited mee of such a Trespass, that I will pay him such a summe of mony; this is Nudum pactum. So if I say to another, to whom I. S. doth owe mony, if hee doth not pay you, I will pay you. Plow. 5. 102. Doct. and Stud. 105. 12 H. 8. 12. Dyer 21. 27. Coo. 6. 43. Yet see Brownl. 8, 9.

Valuable Consideration.

So if one promise mee, that if I will deliver him one hundred Crowns, hee will deliver them to mee again; this is no good consideration. And yet if one this day deliver mee twenty Crowns, and in consideration hereof I do then promise to re-deliver them; this is a good promise. Adjudged.

Nudum pactum.

So if I assume to another to lend him thirty pound for a year, or to give him forty shillings in consideration that hee at such a day (now past) at my request lent to mee thirty pound for such a time; this is not a valuable consideration, and therefore the promise is not actionable. Croo. 1. last publisht 885.

Count.

If one sell a horse to another for mony, and a third person standing by, saith, if hee do not pay you, I will. But this is after the sale made; this promise will not binde. So of wares sold before. And so upon a Loan of mony. But the promise that must binde in such a Case as this, must be laid to be, before the bargain be past; and in consideration that hee at his request did it, and that hee promised, that if the other did not pay him at the time, hee would pay him. Bulstr. 1 part 120. See Bulstr. 2. part 73, 75, 76, &c.

For to get a decree in Chancery to pay mony.

If one promise mee, if I can procure a decree in Chancery in such a business,

business, that hee will give mee three pounds for it; this is good, and if I do it, I may sue for the mony. Yelverton 100. Count.

One did declare, that in consideration that hee had sold a horse to him, that hee would pay him five pound; in this case it is said to bee adjudged in the Exchequer Chamber good, albeit it said simply the time past. Pasche 8 Jac. Co. Br. Mary Andrews Case.

So one declared, that hee at the Defendants request had sealed a Release, and therefore hee assumed; two Judges agreed it good. And all of the Judges held, if it had been made at the time of the Release made, it had been good. Cro. 2. 2964.

So one declared quod deliberasset & dedisset to the Defendant twenty Sheep, and in consideration hereof, an Assumpsit; this was resolved not good, and the Judgement was stayed upon it. Croo. 1. last publisht 412.

If a Baylift pay the debt, and thereupon the Plaintiff doth promise to him to deliver the principal Obligation, and a Letter of Attorny to sue the Principal, this is no good consideration to raise an Action. Adjudged in the Exchequer Chamber 38. 39 Eliz. Dixon and Adams.

If I at another request deliver him divers peces of Cloth, and hee assume to re-deliver them to mee on request, no Action will lye upon this. But if it were mony out of a bag, it would. Yelverton. 128. Delivery of goods.

If one in consideration that I have lent him ten pound, promise to pay it mee again; this is a good consideration and promise. Brownl. 2. part 40. For a Loan of mony to pay it again.

If one in consideration that hee doth owe mee five pound Rent on a Lease of a ground for a year, or upon a Bond Promise to pay it mee upon request, it seems this is not a good consideration, for it is real and certain, and I may have debt for it. But if one shall promise mee in consideration that hee owes mee five pound on a Contract, promise to pay it such a day; this is good. So in the first Cases, if there be a forbearance of the debt any time in the consideration, then the Action will lye. Hobb. pl. 365. Croo. 1. part 250. For that one doth owe mee mony on a bond that hee will pay mee.

If I. S. bee indebted to mee two hundred and fifty pound on a Simple Contract, and I make I. Goring my Executor, and dye, and hee doth agree, and is content to take of I. S. for the two hundred and fifty pound, one hundred and fifty pound, and to take it by twenty pound a year, in consideration whereof I. S. doth assume so to pay it, and it is a good consideration and promise. Yelverton 10. So if an Executor bee indebted for his Testator, and after his death he make a promise to pay it at a day to come, this makes him chargeable in his own Right. Consideration to take 50 l. for 250 l. Executor.

If one give mee seven pound Legacy, and make his wife Executrix, and dye, and shee marry with A. who in consideration hee hath the custody of some of the goods, promise to pay it at a day, and his wife is dead at the time of the promise; this is no good consideration or promise. Yelverton 184.

A. brought an Assumpsit against B and declared, that whereas B. had feloniously slain one P. M. the Defendant after this required the Plaintiff to endeavour to get his pardon, which hee did thereupon labour and obtain. And that afterwards the Defendant in consideration thereof promised him a hundred pound. And for this hee brought his Action. And the Declaration was held good. Hobb. Rep. 147. Consideration past. Part 20.

If one board with mee for a quarter of a year, and after I. S. entreat mee that hee may board with mee a year longer, and after before the year expired I. S. doth promise mee that hee will pay mee for the year; and for the quarter behinde as much as it shall bee worth; in this case, because

cause

cause part of the consideration is executory, and all is not executed: this will bee good, and I shall recover of him for the year, and for the quarter both. Adjudged. Trin. 14 Jac. B. R. Cotton and Westcot.

If one promise mee, in consideration that I was bound for him for a debt, and paid the mony, that hee will pay mee my mony again such a day; this is a good consideration. Croo. part 2. 18. The Plaintiff laid his Action, that the Defendant requested him to give his Credit to I. S. for fifty pounds for Wine, and that upon this hee gave his bond for it, and had paid it upon a Suit; and having acquainted the Defendant with it, hee promised in consideration thereof to pay it; this was adjudged a good consideration. Croo. 2. part 18. Yelverton 45. See Croo. 1. last publisht.

One in consideration that I have paid for him at his request ten pounds to C. at such a day, which was a year before the promise, hee doth assume to re-pay it, cum inde requisitus esset; this is a good consideration. Croo. 1. last publisht 282. And it is given as a Rule, That if a Marriage, or Engagement bee by another, by Suretiship, or the like; And this is done at my request. And after it is done, I bee told of it. And I do then in consideration thereof, promise to give mony, or do something in lieu thereof; this shall bee a good consideration to give life to the promise, albeit it bee past. Yelverton 45. And

If I have any hand in the first Contract I shall bee chargeable, as in Loan of mony, or goods, if I say before, or at the time, if hee pay you not, I will, or I pray let him have them, and then I after promise payment. But if one bee in a shop buying wares, and after it is done, I say to the seller, if hee do not pay you, I will. So of mony borrowed; this promise will not binde. Bustr. 1. part 120, 121.

If my Servant bee arrested in London, and two of my friends without any privity become Bayl for him; And after I do promise them for their friendship, to save them harmless from all damage and costs, &c. If they bee after charged with the debt, by this they cannot have this Action against mee, But if I had requested this of them before, and assumed after, perhaps it may bee otherwise. As if I in consideration that you have married my Daughter at my request, say, I will give you twenty pound; this is a good consideration and promise. Dyer 272. 12 H. 8. 112. Jac. B. Broo. 106. Croo. 1. 295. But if I say to B. I become debtor to you for the debt of I. S. this is Nudum pactum. Dyer 20. pl. 131. And yet if I sell goods, and have not delivered them, and another promise to mee so I will deliver the goods, to pay mee the mony; it seems this is a good consideration, and that an Action will lye. 12 H. 8. 11.

Consideration of a Marriage past.

In Mich. 37. & 38 Eliz. Co. B. between Jenney and Goochman. It was adjudged, That if one declare, that hee in consideration quod deliberasset & dedisset to the Defendant twenty Sheep, hee assumed, &c. that this was not good, for that it was past. And Pasche 8 Jac. Co. B. One declared, that in consideration that hee had sold to him a horse, hee promised to pay him; it was adjudged naught. Mary Andrews Case.

If A. promise to B. that in consideration B. hath lent to him a hundred pound at a day past, that hee will pay it to him; this was doubted. Hill. 41. Eliz. Co. B. Dogget and Bowill. But agreed by all the Judges. Mich. 11. Car. 1. B. R. that if hee had laid a Request, and the Case had been so, that the Action had layen. But if a man of his own head and courtesie will do a thing for mee, I cannot have an Action for this. But if one bee about to buy goods, or borrow mony of mee, and another before the sale, or loan, tell mee; that if the buyer or borrower do not pay mee, he

Past.

he will, or if he bid mee deliver the things, and if the buyer pay mee not, hee will pay mee upon request; These are good considerations. But otherwise it is where the promise comes after the borrowing, or buying. 12. H. 8. 12. 44. Ed. 3. 21. But in these and such like Cases, there must bee a demand of the debt by mée, before I bring my Action. Due in consideration, that I have sojourned him at his request, and will sojourne him a year, doth after promise me twenty pound, this is good for all, for here is a time to come. Adjudged Trin 14. Jac. B. R. Cotton and West. Demand.

If A. B. in consideration that I have sealed a Release of a debt to him due from I. S. upon the request of A. B. promise to pay mée the money, if I. S. do not; it is said to be resolved, that this consideration is good, albeit it be past. So because I was bail for his servant, that he will save mée harmelesse; So because I have at his request granted to him, the next avoydance of a Church, it is said these are good considerations. Croo. 1. part. 296. Dyer 272. Past.

It was agréed in Rainfords Case 28. Eliz. B. R. That if A. requested B. to heal a poor man. And after he is healed, A. promise to B. that in consideration, that he did it at his request, he will give him ten pound; That this is a good Assumpsit.

The Plaintiff declared, that whereas he had bought of the Defendant, three parcels of Land 10. Decembris, afterwards 19. Decembris assumed to make him a good assurance thereof before such a day, and it was adjudged good, and for the Plaintiff. Croo. 1. last publisht. 138.

If I sell Chéese to the Son of I. S. And the Father pray mée to deliver the Chéese to his Son, and assume that if his Son do not pay mée for it, he will; This is a good consideration and promise, on which I may have this Action. Croo. last publisht 700. Consideration past. Part 21. Consideration. Delivery of goods.

If I promise to another, that in consideration he hath at my request, by his deed, given and granted to mée, the first and next avoydance of the Church of B. assumed to pay mée, one hundred pound; This is a good consideration and promise, on which I may have Action. Croo. 1. last publisht. 715. Promises to pay the moneys Consideration grant of the next avoydance promise to pay money.

If one in consideration, that I will sell him three Cows, for ten pound, promise to pay mée the ten pound at Easter following, and if he fail, that he will pay mée an hundred pound upon request; This is a good consideration for the recovery of the hundred pound. Croo. 1. last publisht. 747. For Cows sold, to pay mee money.

If I. S. assume to mée in consideration, of divers summs paid to mée, that if Cooper at his return from beyond Sea, shall affirm that he received of mee twenty pound, that I. S. will pay mee the twenty pound, this is good, and if pursued will bear Action. And in this Case notice will not be necessary. Croo. 2. 492, 493. That for money paid, if it shall be affirmed, he will pay it.

And it hath been agreed by the Judges, in B.R. That if one promise me that in consideration I have at the request of I. S. soliciten the causes of I. S. or sold my Land to I. S. or married I. S. or entred into such a Bond, he will &c. That every one of these is a good consideration. Considerations valuable.

But if I promise to another twenty pound, because he is my kinsman, blood, or acquaintance, which is a thing past, this is no good consideration. Plow. 302. 309. *Nudum pactum.* Consideration past.

If I being a Tailor, have made a garment for one, who doth promise, that if I will deliver it to him, he will pay mee, as much as it was worth the doing, it is a good promise. Croo. 1. 55. To deliver goods to pay money.

If I have a Statute, and one desire of mee to see it, and to keep it, and that he will deliver it to mee in six dates, and in consideration thereof promise That for a Statute delivered to mee I will pay money.

mise that if he do not re-deliver it within the time, that he will pay mee a thousand pound upon request; this is a good consideration and promise, to give Action. Croo. 1. last publisht 74.

That in consideration of discharge of a Prisoner, he will pay mony.

If one bee illegally arrester upon a warrant, and he, or another for him, promise the Plaintiff in the suit, that if he will discharge him of the Arrest, he will pay him ten pound upon request; This is no good consideration. Yelverton 25. Vivian and Skiping M. 10. Car. 1. B. R. upon Assumpsit. In consideration the Plaintiff did assume to stand to the award of I. S. and I. D. and if he failed to pay forty pound, the Defendant assumes to pay forty pound, if he did not perform, &c. this is a good promise and consideration, Croo. 1. 280.

To stand to an Award in consideration of money.

So if it be in consideration, that he will submit to the award &c. See for this submission, Croo. 1 part 460. See for this, Croo. 1. last publisht 70.

And if two submit to the Award of a third person for all differences between them without any Assumpsit, this will be Actionable, if they do not perform it when it is made. Croo. 1. last publisht. 70.

Consideration, to shew a deed of the Rent, and he will pay it.

If one owe mee money for Rent behind, and I demand it, and he doth assume, that if I can shew him a Deed that the Rent is due, that he will pay mee the Rent and Arrearages thereof; this is a good consideration to ground an Action, if I do shew him the Deed by which it is due, &c. Croo. 1. 67.

If A. B. in consideration that I will assure certain Land to I. S. at his request, assume to mee, that if I. S. do not pay mee upon request, ten pound and ten load of Faggots, that he, the said A. B. will pay mee; this is a good consideration and promise. Croo. 1. part last publisht. 85.

That I will make such a Lease, he will pay mee money

If one in consideration I will make him a Lease of such Land, assume to pay mee twenty pound, this is not a good consideration, for by this he may make a Lease at will only. Croo. 1. last publisht. 565.

That in consideration I have delivered him money, to pay I. S. for mee, that he will pay it.

I being bound to I. S. in an Obligation of forty pound, to pay twenty pound, and it is forfeit. And I deliver ten pound to A. B. to the intent he should pay it to I. S. in part of payment without any delay, and hee in consideration thereof promise so to do, but doth it not; I may have this Action, for the consideration is good enough. Croo. 2. 667.

Forbearance of Goods to pay money.

If one have goods of mine, and in consideration that I will forbear them, promise mee to deliver them within six months; this, it seems, is a good consideration and promise. Croo. 1. last publisht 388.

That for a Lease made, and mony paid to mee, I shall save him harmlesse, &c.

If one let mee a Close for two years, and for this Lease, I promise to pay six and twenty pound, and for this the Lessor doth promise to discharge and save mee harmelesse, from all Charges, Troubles, and Incumbrances. This is good, and Actions may arise on either side, but if any Action be brought for any trouble, or incumbrance, it must bee set forth, what it is and by whom it was granted. Croo. 2. 444.

That if A will desist his suit for such an Office, if I can get it, he will pay mee so much.

If I bee a suitor for the under-Sheriffs Office, and another man sues for it also, and he promise mee that if I will desist my suit for it, and he obtain it, to pay mee twenty pound for such a Gelding I have delivered to him; This is a good promise, and the consideration good and valuable. Croo. 2. 612.

That if I will let him have such a house, he will pay mee so much.

If one Williams hath the possession of a house, and A. B. in consideration that I will endeavour to procure Williams to permit A. B. to have the possession and profit of the house, A. B. doth assume to give mee twenty pound if I shall procure Williams to do, as before. Yelverton. 11.

Money promised to do a good work.

If one promise to one that is a Physitian, so much to heal a poor man of his disease, or to a labourer so much to amend an high way, he may have

have this Action for the nature of the work, so to do any such like good work, and hee do it; hee may have this Action for this. And it is said, if a day be set for the payment of the mony, that the party to whom the promise is made when the day comes, may sue for it before the work is done. Doct. and Stud. 105. Plow. 35. 17 Ed. 4, 5. Hobb. Rep. pl. 278. But Quære, unlesse there be a promise by the party to mee to do the work, except the goodnesse of the work supply and make it out a consideration in Law. Owens Rep. 94. Consideration past.

If a friend of mine be sick in an Inne, and I come to the Inne-keeper, and bid him see to him, and provide necessaries for him, and I will see him paid for it, this is good; Bulstr. 3. 31. Mony promised to take care of a sick man.

If A. promise to B. to pay him such mony as hee shall disburse out of his own mony for Cloth, to the use of A. this is a good consideration; for by the buying of the Cloth to the use of A. the property is in A. presently. 9 Jac. B. R. and Moore Survey of the Law. 8. And hee need not averre that the Cloth came to the use of A. Mony promised to him that shall lay it out for another. Averment.

If I promise to another in consideration he will lay down his mony to pay for Cloth bought by I. S. for mee, that I will pay it him again; this is a good consideration and promise. Trin. 9 Jac. B. R. Moores Case.

If one in consideration that I will travel with him from B. to London, to help him to search for the Will of W. Stacy, that hee will pay mee four pound for my Journey; this is a good Assumpsit to give Action. Croo. 2. 619. Mony promised for work done. Part 22.

If I promise in consideration of something past to one, as in consideration that hee hath builded mee a house, or quitted mee of a Trespasse, or delivered my friend wares, that I will pay him mony, or do something else; this is Nudum pactum. Plow. 5. 302. Consideration past.

So if I say to another, to whom I. S. doth owe mony, if hee do not pay you, I will pay you, this is Nudum pactum. Doct. and Stud. 105. 12 H. 8. 12. Dyer 21. 27. this hath been often adjudged. So if one promise mee, that if I will deliver him a hundred Crowns, that he will deliver them to mee again. But if I deliver to one twenty Crowns, and in consideration thereof, hee doth at the time of the delivery thereof promise to re-deliver them to mee again; this is a good promise. Adjudged.

If one, the eighth of May deliver mee ten pound, and I the ninth of May in consideration hereof promise to pay him the ten pound; this is no good consideration. But if it were at the same time, it were good. Mich. 42. 43 Eliz. Pilsworth's Case. And yet if I sell all my Lands, or all my goods, and nothing is appointed by the agreement, what I shall have for it; it is said, this is a good Contract, and I may sue for the worth for it. Croo. 1. last publisht 42 (This elsewhere.)

One declared, that whereas Hulledge was sued in the Queens Bench by Checke, and the Plaintiff at the instance of the Defendant became Surety for him, that Checke recovered, and had execution against the Plaintiff; the Defendant afterward promised the Plaintiff, that if Hulledge did not pay the mony which the Plaintiff had paid to Checke, that the Defendant would pay it, and averre, that Hulledge did not pay it, nor the Plaintiff upon Request, &c. And it was adjudged for the Plaintiff, albeit the promise were not made at the time of the Request. And there seemed to bee agreed, That if I promise one that hath served mee, I will give him ten pound. And that if I retain one to serve mee, and hee doth for a year: and if one after the year promise in consideration hee hath served him, to give him ten pound for it: Action lyeth, and yet the Contract For Service done.

trary is said to bee held by some. But if one agree to serve mee a year for twenty shillings wages, and at the years end I give him his twenty shillings, and then promise him twenty shillings more; this is Nudum pactum. Croo. 1. last publishe 42. For an Assumpsit grounded upon a consideration which is past before the promise made, is good, if it be alledged to bee made at the instance, and request of the Defendant. Pasche 24 Car. 1. B. R. Stiles Registr. 31. If I request one to solicite a businesse for mee, and after hee hath done it, I promise him ten pound for it; it is held, this is a good consideration: Otherwise if it bee as a meer voluntary courtesie. Hobb. Rep. pl. 128. 72. Dyer 355. And it is said to bee adjudged in this case to lye, where I do request B. to bail my Servant, and after I say to him, in consideration that you have at my request bailed my Servant, I will pay you ten pound such a day, that this is good. Brownl. 1. part 7, 8. 73. Dyer 272.

Nudum pactum.

If one become Bail for my Servant, and after it is done, I promise to save him harmless, Action will lye upon this. Survey of the Law. 94.

A. sued and set forth, that hee sold a Horse to B. such a day, year, and place to bee paid at a day to come, and that the Defendant ad tunc & ibidem ratione præmissorum assumed to pay the mony if &c. this is not good, for the Contract, and giving of day to B. was not ad instantiam of the Defendant, but compleat before. Pasche 9 Jac. B. R. Farmer and Field. Survey of the Law. 97.

And yet one did declare, that in consideration that hee had sold a Horse to him, that hee would pay him five pound; and this is said was adjudged good in the Exchequer Chamber, albeit it did imply time past. Pasche 8 Jac. Co. B. Mary Andrews Case. (A. B.)

One declared that I. S. emisset equum, at such a price, and the Defendant ad tunc & ibidem ratione præmissarum did assume to pay the money, and it was adjudged nought, for the sale was before the consideration. Pasche 9. Jac. B. R. Farmers Case.

If one promise mee, that in consideration I was bound for him for a debt, that hee will pay mée the mony such a day; this is good. Croo. part 2. 18.

If A. deliver to B. the eighth of May a hundred French Crowns, and the ninth of May as many more, and B. in consideration thereof the ninth of May did assume to deliver six shillings for every Crown in silver, upon a Non-Assumpsit, verdict was given for the Plaintiff, and the damages entire, and Judgement given, but reversed for this cause; for the Assumpsit goeth onely to the last delivered. Mich. 42, 43 Eliz. Pilworth and Seal's Case.

If I marry a mans Daughter, and he doth after, in consideration thereof, promise mée a hundred pound, I may have this Action, especially if the Marriage bee said to bée at the request of the Defendant for his affection doth continue, and her advancement before was consideration enough. Croo. 1. last publishe 59. And there it was said to bee adjudged in the Exchequer, that a promise of ten pound in consideration of Council given to one was good, though the Council was given before.

About a Marriage.

Consideration past.

If one promise mee ten pound if I marry his Daughter, I may have this Action. Doct. and Stud. 104. A. 16 H. 7. Prohibition 22. lib. Inst. 2. B. Sect. 2, and 4.

If A. bee to marry B. and C. living with A. saith to B. that if he shall marry A. and his Father shall not make such a Jointure to her, he will give her a hundred pound; B. doth marry A. the Jointure is not made;

Mony promised in Marriage.

made; in this case A. and B. may have this Action against C. for this hundred pound, Mich. 29 Eliz. B. R.

So if A. promise to B. a hundred pound, in consideration that hee shall marry his Daughter. Trin. 29 Eliz. B. R. March. and Rainford. Survey of the Law. 93.

If A. promise to B. that whereas his Son is a Suitor to his Daughter, if B. will give his Assent, that hee will give B. fifty pound; this is a good consideration, and B. may sue for the mony. Trin. 12 Jac. Co. B. Crisly and Louther. Mony promised in Marriage.

A. promiseth to one fifty pound if hee marry B. hee may sue for this, and need not shew that hee gave notice of the marriage, or make request for the mony. Mich. 7 Jac. B. R. Brently and Jodd. Survey of the Law. 92. Notice, Request, Pleading

A. having speech with Eliz. Stuckley about marriage, promiseth to M. the Daughter of the said Eliz. that if shee marry him, without disposing of her estate, hee will give to M. in marriage forty pound; this is good, and an Action will lye, if shee averre that shee hath not disposed of her estate. Mich. 15 Jac. B. R. Kings Case. Averment.

If A. promise to B. twenty pound, if hee marry C. and hee do so, hee must give notice of it to A. But a Taylor may have an Action without giving of notice what hee doth deserve for the making of his Garment. Hill. 13 Jac. B. R. Hall and Heming. Survey of the Law. 98. Notice. Taylor for mony for his work.

If I promise to one, so hee will marry my Daughter, Kinswoman, or Servant, or if hee will marry my Daughter, Kinswoman, or Servant, that I will give [or pay] him twenty pound; or if I promise him twenty pound in marriage with my Daughter; in all these Cases the party may have this Action against mee for the mony. Plow. 205. Fitz. Prohib. 3. Doct. and Stud. 104. And it is said, That if I promise one a hundred pound in consideration that hee hath married my Kinswoman, Daughter, or Servant, that this Action will lye for this, for the cause doth continue. Mich. 8 Jac. B. R. per Curiam. and M. 4 Car. 1. B. R. And yet against this it is said to bee adjudged in the Exchequer Chamber between Sandill and Jenny; That if I intreat one to marry my Daughter, and after the marriage say, That in consideration hee hath at my request married my Daughter, that I will pay him ten pound such a day, that this Action will not lye for this. But it seems the Law is taken otherwise. See Croo. 1. last publishe 59. Mony promised in Marriage. Consideration past. Part 23.

If I promise to a woman, that if shee will marry with my Son, I will give her to marriage the one half of all my goods; this is a good promise, and actionable. Goods promised in Marriage.

If one promise to mee a woman, that if I marry such a man, hee will assure mee such Land, &c. for my life, and I do marry him; this is good, and my husband and I may sue for the breach of this promise. Bulstr. 2. part 269. 279. Land promised in Marriage.

If I promise to another twenty pound with the marriage of my Daughter; it hath been said that no Action will lye for this at Common Law, but it seems the Law is otherwise. Plow. 70. 301. Doct. and Stud. 104. F. N. B. 44.

If I promise to a woman having a husband, who hath a Daughter and Heir to Land, that if shee will give her consent that I shall have her Daughter, I will pay her ten pound; this is a good consideration. Adjudged. Hobb. Rep. pl. 20. Mony promised to the Mother to let mee have her consent for her Daughter.

And if there bee none of all this, nor some of such like thing in the Case to move the promise, then it is Nudum pactum ex quo non oritur Actio. *Nudum pactum.*

Actio. And therefore if one promise to give mee twenty shillings, and I give him nothing for it; I may not have this Action upon this promise; but if I have given him a penny, or a pennys-worth to induce the promise, this Action will lye.

Nudum pactum.

So if one promise to pay a debt to I. S. which debt is owing to I. S. by G. D. this is Nudum pactum, for want of consideration, and if hee pay it not, no Action will lye against him for it upon this promise. Stiles Registr. 75.

If one promise to build mee an house, make mee an estate, or any such like thing, and there is nothing given, or promised by mee for it; this is no good Assumpsit, and Nudum pactum. And where one doth promise to do a work by a day, and it is not agreed, what hee shall have for his pains, or when; or if it bee agreed, no part of the mony is paid; in this case the one cannot sue for the not doing of the work, nor the workman for his mony, till hee hath done the work. But if there bee mutual promises, by the one to do the work, and by the other to pay the mony; there, either of them may have an Action against the other at any time. 3 H. 6. 36. Dyer 21. Plow. 5.

Reciprocal Actions.

Consideration of further day given. Promise to pay.

If one owe mony to mee, and hee promise mee, that in consideration that I will agree to give further day for the mony, hee owes mee for six months, that hee will secure it to mee; this is no good consideration, for I may agree to give day, and sue him after. M. 7 Jac. B. R.

Sufferance to injoy Land. Promise of mony.

A. doth promise ten pound to B. if hee suffer C. to injoy Land: there, although C. enjoy it not, yet if A. agree, and do not interrupt C. it is said, this Action lyes. Paschc 15 Jac. B. R. Taylor and Wilks. Quære of this.

Promise of mony not to beat mee. *Nudum pactum.*

If I promise twenty pound to a man, in consideration that hee will not beat mee; this, it seems, is no good consideration. 21 Jac.

If I promise to one twenty pound, because hee is my Kinsman or Acquaintance; this is no good consideration to raise an Action, *Plow.* 308. 309. Or I promise to give one ten pound, because hee is my Son; this is not good.

Promise to pay mony if he not shall surrender Land.

A. being a Copy-holder, makes B. his Executor, and intends to surrender, to the intent that B. should satisfie a debt to D. hereupon the Son of A. promises, that if hee do not surrender, but suffer the Land to discend, hee will satisfie the debt. A. dyes, B. shall have an Action against the Son; for it is a good consideration. Hill. 9 Jac. B. R. Gray and Grav. Survey of the Law. 96.

Promise, if hee pay mony, to pay it him again.

If A. and B. bee bound in a Bond jointly, and severally to pay mony, and in truth A. is principal; and A. saith to B. pay the mony to the Obligee, and I will repay you; this is a good promise, and if A. pay it, hee may recover it again by this Action. Adjudged. 9 Car. B. R.

Forbearance, promise to pay.

If one bee bound by obligation to mee, to pay l. *s.* mony on such a day, and the Obliger before the day promise, that if hee will forbear him till such a day, hee will pay it; this is no good consideration, for I. S. had no cause of Suit per Justice Bridgman.

Infant promise at full age, upon forbearance to pay it.

If an Infant buy waves, or other unnecessary apparel, and when hee comes to his full age, in consideration that hee had a good bargain, he doth promise, if the other will forbear him a month, hee will pay him; this is no good consideration. Adjudged. 30 Eliz. Withipoles Case. Stiles Rep. 284.

Nudum pactum.

If I without other cause promise to give one twenty pound towards his losses by fire, or to build his house anew; these are not good Assumpsits to give Actions. 17 Ed. 4. 4. Plow. 308.

So

So if I. S. owe mee money, and another saith, hee will bee my Paymaster, and pray mee to take him debtor for it; this is not a good consideration for Assumpsit. Fitz. Debt 136.

So if one promise mee twenty pound, because I have built him a house; or if one owe mee twenty pound, and another come to mée, and pray mee to take him debtor for it: Or if hee say, that if the other do not pay mée at Michaelmas, hée will; these are not good considerations to raise Actions. 9 Ed. 4. 14. 44 Ed. 3. 21.

If one bée about to buy goods, or borrow money of mée, and another man before the loan, or sale, tell mée, that if the buyer, or borrower pay mée not, hée will pay mée; or if hée bid mée deliver the things, and if the buyer pay mee not, hee will pay mée on request; these are good Considerations and Assumpsits. But otherwise it is, where the Promise comes after the borrowing, or buying. 12 H. 8. 12. 44 Ed. 3. 21. But in these Cases there must bée a demand made of the money from the Surety before the Action can be brought. Consideration past. Demand.

A. doth promise to pay B. for his reasonable board, for such time as hée shall bee with him. B. sets forth in his Declaration, that hee was with him ten months, and that five shillings a month is reasonable, amounting in all to fifty shillings; in this case it was held good. 30 Eliz. B. R. Floyd and Irish. Survey of the Law. 96. For tabling and lodging, promise of pay. Part 24.

A. being sick in an Inne, B. doth promise to pay as much as shall be due for all necessaries that the Inne-keeper shall provide for A. this is good; and the Inne-keeper in his Count need not shew the things hee did provide, but to say that hee did provide necessaries until such a day, &c. in all to the value of twenty pounds. Pasche 13 Jac. B. R. Crips and Baynton. Survey of the Law. 96, 97, So of a Physician by Dodridge. Promise to pay for looking to a sick man. Count.

If one for forty shillings paid, assume to deliver mee forty quarters of Corn, at such a time and place, for ten pounds to be then paid to him, and if I bring the money to the place at the time, and tender it, I may sue for the Corn; and if hee bring the Corn, hee may sue for the money. Coo. 4. 93. Plow. 182. Promise to deliver Corn for money to bee paid.

Goods, or a promise of Goods, may bée a good consideration for goods, or a promise for goods, as well as money. Fitz. Debt 68. But if there bée none of this in the Case, it is but Nudum pactum. Consideration of goods for goods promised.

If one promise mee, in consideration that I will not enter a Caveat against the Probate of the Will of I. S. that hée will pay mée ten pound; this is a good consideration, whether I have any cause or not. So adjudged in the Exchequer Chamber. Not to enter a Caveat, promise to pay money.

If A. owe to B. fourscore pounds, and A. in consideration that I will be bound for the money with him to B. promise to enter into a bond of a hundred pound to mée, and I become bound with him; this is a good consideration to give an Action to mee upon the breach of his promise. Adjudged, Mich. 9 Jac. B. R. Knevets Case. To become bound for another, hee promiseth to bee bound to mee.

A promise may bée a consideration of another promise; for one promise made in consideration of another promise made at the same time, and each party may sue at any time upon the promise made to him. But if they bée made at several times, they are both void. Hobb. Rep. pl. 16. 116. M. 2. Jac. Co. B. Somes Case. Brownl. 1. part 10. and Mich. 4. Jac. B. R. Cadells Case. Promise, consideration of a promise.

So if one owe mée twenty pound on a Bill, and I promise him to deliver him the Bill, and hée promise to give Bond with two Sureties to pay the money by a day. 38, 39 Eliz. Gowers Case.

If I have a Judgement against a man for twenty pound, and I promise

mise him that if hee will pay mee the money I will give him five pound; this is a good consideration, to give an Action upon my promise, for it will be cost and trouble to mee to get it. Trin. 38. Eliz. Dixon and Addams.

So if one have taken away my goods from mee wrongfully, and I promise him ten pound to let mee have them again; this is a good consideration. Adjudged. Poor and Clipton's Case Temp. Car. 1.

To give mee my own without Suit, promise to pay money.

If one say to mee, that if I will depose before the Mayor, of A. the truth of what I say and affirm, he will pay mee twenty pound; this is good, and if I do voluntarily depose it before the Mayor, I may recover the money in this Action. Hill. 38. Eliz. Co. B.

To take a voluntary oath.

If one be in Execution at my suit, and another say to mee deliver him out of Execution, and what it costs you I will repay; this is good, and being executed, in the consideration will be Actionable. Croo. 2. 483. Case.

Promise to pay money upon discharge of a Prisoner.

If one have a Judgement against mee for a hundred pound, and he promise mee, so I will pay him fifty pound, he will acknowledge satisfaction or release the execution of a hundred pound by a day; this is a good consideration to give an Action, if it be not done. Adjudged. Cook. and Harvey's Case. Adjudged. Mich. 38. Eliz. Co. B. Reynolds and Pinham's Case.

To receive part of a debt, a promise to discharge the whole.

If A. owe to B. twenty pound, and C. say to A. pay him his twenty pound and I will pay it you again; this is a good consideration and promise. Adjudged M. 7. Car. B. R.

Promise to pay money again, to him that shall pay for mee.

If I be bound in a Bond of twenty pound, to pay ten pound by a day, and fail at the day, and after the Obligee bid mee pay twelve pound to I. S. and he will deliver the Bond such a day; this is good to raise this Action, if it bee not delivered. Harveys Case 4. Jac.

To pay part of a debt after it is due, promise to deliver the Bond.

If one bee bound to pay mee money on Bond at a day, and I promise him, if he do it, I will give him his bond to be cancelled; this is a good consideration and promise. Croo. 1 part 5. And if the promise be to give him five pound if he will pay it the morning of the day; it is a good consideration. Croo 1. 5.

If one that hath my goods, promise mee, so that I will let him have them for a month, that he will deliver them to mee; this is a good consideration to give an Action, if he do not deliver them. Pasch. 37. Eliz Co. B May and Albers.

Delivery of my own goods, promise to deliver them.

If one bee bound in Bond, to pay mee five pound on a day, and I promise him ten shillings, to pay mee the morning of the day; this is good. Croo. Rep. 1. 5.

Money promised, to pay mee my own debt.

If one in consideration that he doth owe mee five pound Rent, on a Lease of a ground for a year, or on a Bond, promise to pay it to mee on request, it seems, this is not a good consideration, for it is real and certain. Hobb. Rep. pl. 365. And I may have an Action of debt for my money. And yet, it is said to bee adjudged, that if one in consideration, that he doth owe me five pound, on an Assumpsit, or contract, promise to pay it mee such a day, that this Action will lye for this, sed Quære, and see the Cases after, where the contrary is held. But, if a man be indebted to mee a certain summ, for a Rent, or on a Bond, and promise to mee in consideration of forbearance of the debt some certain time, that this promise may be good. Adjudged so.

Of a debt certain, promised to be paid.

Forbearance of it for a time.

If my Debtor, who hath Statutes from other men, deliver them to mee, towards my satisfaction, and dye; and one that is neither Executor nor Administrator to him, request mee to deliver him the Statutes, and and he will pay mee the debt; this consideration is good enough. But if the

Promise to pay a debt for delivery of Statutes.

the request bee by, and the delivery to the Executor or Administrator, who hath right to them; it may bee doubtful. Hobb. Rep. pl. 7.

If a Terre-tenant promise to mee, in consideration that I do assign to him a Statute I have chargeable upon his Land by way of discharge, that hee will pay mee twenty pound, this is a good consideration to produce the Action. But if the assignment of it were to bee to a stranger, there it seems otherwise, and that the consideration were not good. Adjudged. Pasche 38 Eliz. Berrow and Gray. Upon Assignment of a Statute.

If one, having made mee a Lease for years, assume that I shall quietly hold it, without the let of any person whatsoever; this is a good promise, and disturbance with, or without a Title, is a breach of it to give Action. Dyer 328. Promise that I shall enjoy a Lease.

If one in consideration that I will bee bound for his appearance, being arrested upon a Recognisance, promise mee to appear at the day, and do not; I may have this Action against him, and it will not excuse him; that a certiorari came to remove the Record, for hee must appear notwithstanding. Adjudged Trin. 9 Jac. B. R. Rolls Case.

If one bee arrested at my Suit for a debt, and make an Obligation for the mony, to pay it at a day to come, but doth not seal and deliver the Obligation to make a deed of it. But in consideration of his inlargement out of prison, doth promise to seal and deliver it upon request; this is a good Assumpsit to produce an Action. Pasche 9 Jac. B. R. Bassets Case. Enlargement out of prison, Promise to seal a Bond.

If a Gaoler promise to mee to keep his prisoners safe, and I am the Sheriff, and hee lets them escape; this perhaps may bee good, without any consideration at all, for hee is bound by Law to do this. Regill. 119. A. Promise to keep prisoners safe.

If I have goods delivered to mee in pawn, and C. desire mee to deliver the goods pawned to him, and hee will pay mee the debt, for which they were pawned; this is a good consideration, and the certainty of the goods need not to bee shewed in the Count; as in case where goods are demanded, or damage for them. Brownl. 2. part 274. Levets Case Adjudged. Pledge delivered, promise to pay. Count.

If I bee an Executor, and my Testator were in debt on a Simple Contract, or Assumpsit, and I promise the Creditor, that so hee forbear mee for such a time, I will pay him, this is good. So the consideration of the forbearance of a Chancery Suit against mee for such a time, is a good consideration. Croo. 2. 47. Forbearance of a debt, or suit. Part 25.

If one owe mee mony on a bond, and owe another mony upon a bond, and both debts are due, and hee in consideration that I will forbear my debt till such a day, and that I will compound with the other for his debt and interest, doth assume to pay mee, &c. this is a good Assumpsit. Croo. part 1. 198.

If one lend mee mony at the request of I. S. and I. S. in consideration that hee will forbear mee a little time, will pay it; it is said, that this is a good consideration. Croo. 1. 175.

If the Son of A. B. be indebted to mee on a bond of eighteen pound to be paid at a day, which is not paid, and the Son moves his Father to pay it, the Father, in consideration that I will give him a longer day, doth promise to pay it, and I do give him a longer day, this was adjudged in the Kings Bench a good consideration: But the Judgement was reversed in the Exchequer Chamber, because it was not good. Croo. 1. last publishe 283.

If A. bee indebted to mee, and for payment thereof, deliver mee goods, and C. in consideration that I will deliver him the goods, promise to pay mee Upon the delivery of goods, a promise to pay.

mee the mony; this is a good consideration and promise. Brownl. 1. part 3.

Assignment of a Statute.

If the Terre-tenant of Land promise mee, in consideration that I do assign to him a Statute I have chargeable on his Land, by way of discharge, that hee will pay mee twenty pound; this is a good consideration and promise. But if it were to assign it to a stranger, contra; for this were maintenance. Adjudged. P. 38 Eliz.

Nudum pactum.

A Tenant-at-will of Land sowed, surrendreth to him in reversion, and for this hee promiseth; it seems, this is no good consideration; for hee might have had it without any surrender; for hee may determine the lease at his pleasure. But if hee bee Tenant for years, it is otherwise. Brownl. 1. part 6.

Action gone.

If one promise to a Parson mony for Tithe, and hee doth that afterwards, by which hee loseth his Tithe and Parsonage; in this case there is no good consideration; and therefore no Action will lye upon the promise. Bulstr. 1. part 111.

Promise for a Cure.

If I say to a Chirurgion, Cure such a one, and I will pay you for the Cure. Bulstr. 2. part 269. this is a good promise.

Promise to deliver Beasts to pay mony.

If I take a mans beasts damage feasant, and another promise mee, that if I will deliver the beasts, hee will satisfie mee for my Trespasse; this is good. But if I sue, I must say to what value my Trespasse is. Bendl. 90.

If one say to one, deliver such a Merchant so much Cloth, if hee do not pay you, I will. Bulstr. 2. part 269. 279.

Promise for Schooling.

If I say to a School-master, teach such a one, and I will give you so much for your pains; or build such a house, and I will give you so much mony for it, this is a good consideration and promise. And it is not considerable in these, and such like Cases as these, whether hee that doth promise have any benefit at all by it, if hee to whom it is made, have losse. Bulstr. 2. part 279.

Upon Account.

To say, that upon account betwéen them, the Defendant was so much indebted to the Plaintiff, that the Defendant, in consideration that the Plaintiff would forbear it for such a time, did assume to pay it; is a good declaration. Goldsb. 48. 6.

Forbearance.

Or to say, That the Defendant was indebted to him, and in consideration of the forbearance thereof, promise to pay it. Coo. 10. 77. Croo. 1. Rep. 82.

Promise to buy goods for mee, to pay it again.

Property.

Count.

If I desire another to buy goods for mee, and promise to pay him again what hee shall lay out; this is a good promise, and the consideration good. And it seems, as soon as the goods be bought, the property of them shall be in mee, and I may take them. And in an Action brought for the mony, it is good to shew that the goods came to my use. Bulstr. 1. part 169.

Promise, if hee pay my debt, to deliver up the Obligation.

If one owe mee mony on an Obligation, and I promise him, if he pay mee my mony at the day, I will deliver him up his Obligation cancelled; this is good. Croo. 1. part 7.

Part 26.

Consideration, to agree that the Father shall settle his estate on his Son.

Averment.

If there be talk of a Marriage betwéen Fulwood and a Widow in London, and in consideration that I will give my assent, that the Father of those Fulwoods should convey to Fulwood all his Lands and Chattels, Fulwood promised to pay such a summe of mony to mee, as the Father shall assign; it seems it is good, and I am to averre nothing, but the Father did assent and appoint such a summe of mony to be paid. Fulwood's Case. Brownl. page 32.

Upon an *Indebitatus Assumpsit.*

If a man be indebted to mée, and promise to pay mée this debt such a day; in some cases I may have this Action upon such a promise. But in such

such Actions as this, the cause of the first debt, as for wares, hiring, or upon a promise, or the like, is to be set forth in the Declaration. And therefore they, in consideration that the Defendant was indebted to him without more, he promised him payment at a day certain, is not a good Declaration. For it may be the first Debt was upon a Record, or for Rent upon a Lease for years, or upon an Obligation, any thereof Action will lye upon the promise. Bentr. 1. part 87. Croo. 1. part 51. 21. Croo. 2. part 206. 2 Bing. 97. 5 [illegible]

Averment.

Rent.

And if in the last Case it be alleged to, and tried for the plaintiff, yet this will not make it good but it is avoidable for errour. Adjudged Pasch. 2 Car. 1. Co. B. Fustens Case. But yet if one promise me, in consideration that I will forbear a Rent due to me by Record, or for Rent on a Lease for years, that he will pay me such a day; this is a good consideration and promise. 14 Jac. B. R. Sir George Marshals Case. Adjudged. Hill. 9 Car. 1. B.R. Bret and Hearths Case. Sremore chap. 13. and in this chap. Hobart pl. 32. Coo. 10. 77. Croo. 1. last publish. 448.

A. brought an Assumpsit against B. and declared, that whereas B. had promised him thirty pounds, and her such a day has given day to the Defendant for the payment thereof, till such a day, &c. that the Defendant assumed to pay it, this was held to be a good consideration, and that without shewing the cause of the first debt, because of the forbearance. Hobb. Rep. 26. The wife dum sola fuit, knowing that her husband was indebted to the plaintiff, and the same appearing upon Account before friends, did in consideration thereof, promise to pay it, part at one day, and part at another day; this was adjudged a good consideration. Marca and Culpepper. Croo. 1. part 50.

Consideration past.

If one build not a house of his own head, no Action will lye for him against me for this. But if it were at my request, and after I promise him, that because he did it at my request, I will pay him; this is good.

Nudum pactum.

R.B. sued A. and declared, that whereas K. L. was indebted to R. B. and the said A. indebted to R.B. in fifty pound, in consideration that K. L. dedit eidem A. fourteen pound & promisit ei ad exonerandum eundem A. fourteen pound parcel predict. fifty pound, the Defendant did assume to pay the fourteen pound; this was adjudged a good consideration. Goldsb. 49. pl. 8.

To discharge a former debt.

A. declared, that B. being indebted to him seven pound, he in consideration thereof, promises to pay, &c. this was adjudged a naughty Declaration. Croo. 1. 21. So where he was indebted to the plaintiff in twenty pound for Rent behind, promised to pay it. Croo. 1. 250. For it is a real Contract, it may be a Rent Service, &c.

Indebitatus.

A. did count in Assumpsit, that where B. was indebted to him in a hundred pound, and he had sued him in such a Court, and arrested him, that C. the Defendant, in consideration A. would not prosecute him in the Suit, that the Defendant, at such a day after, would pay him the debt: this is good, albeit no cause of the debt be shewed for it is but an inducement, and collateral to the Assumpsit of C. Croo. 2. 397.

An Attorney sues, and sets forth, That the Defendant being in debt to him for divers summes of money by him laid out in other, and in his own Courts, the Plaintiff gave him a note of the charges to such a summe, and the Defendant promised, that if I. S. another Attorney there present would peruse the Bill, and say it were reasonable, that he would pay it; this was adjudged a good consideration and promise. Croo. 1. part 113.

Consideration past.

Indebitatus.

The Plaintiff declares, that he the [illegible] Nov. [illegible] Jan. [illegible] the Defendants [illegible] that the Defendant [illegible] Nov. [illegible] promise, that in consideration [illegible] to pay to the Plaintiff this money [illegible] Contract, and the Plaintiff brought the Action upon the last Assumpsit, and the Court inclined to this opinion, that it was good. And that he might sue upon the first, per cursum Contract, and this Election, but not upon both. for here is a consideration continuing. Hodges and Vavisors Trinity Jac. B. R. And there it was said, That this Case was not like to that of Seeke and Pilworth, [illegible] Hil. 8. R. [illegible] where two [illegible] changes one with another so much Silver for so much gold, And after, in consideration thereof one of them promise, &c. Etiam this Case of Passage Justice Haughton held, that indebitatus assumpsit pro Mercatandis vendit. is a good consideration; And there in Hodges Case is a consideration implied. For Forbearance till Christide.

Election.

If A. be indebted to me, and in consideration thereof that I will give him time of payment till the first day of Easter Tearm, promise payment, this is good, but if I sue upon it, I must shew the debt accrewed. For generally Indebitatus is not sufficient, whereof is the ground of the Action; but where it is but a mutuamendit to the Action, as here before, they being agreed upon the debt, and it being but a Collateral Promise, it is good enough without shewing how. Croo. [illegible]

Indebitatus.

An Action upon the Case upon an Assumpsit lies not, upon a general Assumpsit to pay Rent: But if the consideration be to forbear the Rent till such a day, and the promise be ground upon that, it is good. Croo. 1. 250. But by Rolls ch. Justice. If one make a Lease for years of Land, reserving Rent, and after the Lessee promise the Lessor to pay the Rent; an Action may lye upon this promise, If the promise be made at the time of the Lease made, which must be averred in the Declaration expressly to be so. Siles 400. Yelverton 20.

To pay Rent due before.

Averment.

If the consideration to make and induce the promisee, be to provoke, or further the doing of some unlawful Act, as malum in se, as to kill, or beat a man, to burn his house, to forswear himself, or malum prohibitum; as to be a forestaller, a maintainer of Suits, or the like, this will not be good to ground an Action upon it. Croo. Part 1. 13.

Consideration for the matter of it, unlawful. Part 27.

Or to save and keep a man harmlesse, whatsoever he shall do. Or if he be an Officer pro bono publico, that he shall not do his office. Or that a man shall do against his duty in his office: as being a Sheriff or Gaoler, that he shall suffer his prisoner to escape. Or that a man shall not sow his arable Land. Or if the consideration be to make to the stopping of free Trade and Traffick, or to keep idle, and from the labour by which they get their livelihood, and do good to the Common wealth. Croo. 1. 53. Or the like. [illegible] the Cause be an Affection, Symonaical Cause, to keep up, or maintain a Monopoly, or the like, there will not be good consideration in Law. Croo. 1. 249, 250. Croo. Last publisht, 195.

And so generally, whatsoever (for the matter of it) that is the promise shall be said to be unlawful, and shall make the Contract void, the same being in the consideration of the promise, will also make the Assumpsit void. And what will make the promise void, [illegible] And e converso, whatsoever (for the matter of it) will be good and lawfull in a promise, the same will be good and lawfull in the consideration of a promise. And what shall be said to be lawful, or unlawful in a promise,

Bet

Sect. 10 afterwards in Sect. 7. of this chap. part 1, 2, 3, 4.

If these things in Contracts put in Writings, and made Deeds, will serve them, and that the Contracts that have these kinds of indentures in them, will not binde, in that a lesser in reason, they will not binde in this case. But in these things, where deed they be, they marre the Contract, whether it bee made by word or deed. Coo. upon Lit. 223. Lit. 282, 283. Pel. Lect. 722, 723.

If a Prisoner promise to a Sheriff, in consideration he will let him escape, that he will save him harmlesse, or pay him ten pounds; this consideration is naught, and the promise void. So if one promise me ten pounds if I will maintain him in such a Suit; this is naught. Coo. no. 48. 102. Dyer 356. Bolstr. 2. part 213. Croo. 1. 257. But a Solicitor may sue for mony promised to him to solicite a Suit. Hobb. Rep. pl. 72. Dyer 356. Croo. 1. 76.

Part 28. For an Escape, a Promise.

For Maintenance, a Promise.

If I being an Attorney of the Kings Bench for B. and he indebted to mee in divers summes of mony by mee laid out at his request in my own, and in other Courts, in the following of his Suits, and for his Fees, and for other things as his Servant, whereof I deliver him a note running to thirty pound, and he, in consideration thereof, assumed, that if I. S. an Attorney, would peruse the note, and affirm it to bee reasonable, hee would pay mee. I. S. doth so; this is a good consideration and promise, and no maintenance for an Attorney to solicite in other Courts. Croo. 1. 113.

Attorney.

Maintenance.

If I promise to give one twenty pounds to get mee a presentation to such a Church, being void; it seems, this is against Law, and void. Croo. 1. 245, 246. 263. Croo. 3. 82.

If one promise to mee to kill a man, or burn his house; and for this I give or promise him ten pounds; this Contract is against Law, and naught, and I may have my money again. Coo. 6. 54. 55. 430. Dyer 343. Coo. upon Lit. 206.

A Widdow promised to one two hundred pound to follow her Suits, and by two Justices it was held not actionable. But Dyer against them, because it did not appear they were Suits in Law.

If I claim a Title to Land, and one, in consideration that I will assigne my Right and Title to him, assume to pay mee forty pound; it seems this is good. Croo. 1. part last publisht. 151.

If one promise a Sheriff, or other Officer, that hath a man in execution for a debt, that if he will let him go, he will pay the mony such a day; this is void. Yelverton 197.

If one be arrested by an ordinary processe, and he promise the Sheriff, or some other to his use, that if hee will let him go at large, that he will appear at the day, or pay him ten pound, it seems this is not good, not against Stat. 23 H. 6.

Escape.

If a Bailiff of an inferiour Court attach goods, and them deliver to the Plaintiff in the Suit, to re-deliver at the next Court, and in consideration thereof, the Plaintiff in the Suit doth assume to save him harmlesse for the same; this consideration and promise is against Law, and void. Croo. 1. part last publisht. 230.

If I for debt sue one to out-lawry after Judgement, and having taken out a Cap. utlagat. in consideration that I will forbear upon it, one I. S. doth assume to mee, that if the Defendant doth not pay it, he will; this consideration is good, and not against Law, albeit it be at the Kings Suit. Croo. 1. last publisht. 910.

If one at the request of I. S. promise to beat I. D. and I. B. doth promise

mise to save him harmlesse; this is a void consideration. But if one request I. S. to enter into the Manner of Dale, and drive out Cattel, and he will save him harmlesse that doth so, and after Enclosure is thereof, and trespass had for it, hee shall have his Action upon this promise. So if a Sheriff pretending to have a Writ, but hee hath none, arrest one, and request an Inne-keeper to entertain him in his house, or hire men to conduct the Prisoner to Gaol, and promise to save him harmlesse; this is a good promise, and if either of them be sued for it, hee may have his remedy upon the promise. So if a Sheriff hath arrested one upon a Commission of Rebellion from the Council of the North, and he prayes an Inne-keeper to keep him a night as a Prisoner, and hee will save him harmlesse, and the Inne-keeper is sued for it; hee may have remedy upon this promise. Hottons Rep. 55.

If two Mercers agree, A. and B. that A. shall lay down his Trade, and use it no more, and for this B. shall pay him ten pound; this Contract it seems is naught.

If one seized of Land in Fee, binde himself in a Recognisance to mee, and then enfeoffe I. S. of the Land, and I. S. in consideration that I will assign to him my Recognisance, assume to pay such a summe of money by a day; this is not against Law to assign it to the Terre-tenant, as it is to assign it to a stranger. Croo. 1. last publishe 551.

If one retain mee to be his Solicitor for the prosecuting and defending of his Law-Causes, and promiseth to give mee so much, &c. this is not unlawful, but a good consideration, upon which I may have this Action. Adjudged twice. Croo. 1. last publishe 760.

If one bee a Suitor to my Daughter, and I offer fourscore pound, and he will not have her under fourscore and ten pound, and my Daughter before the Marriage, in consideration that I will give the fourscore and ten pound, promise mee to pay mee the ten pound within a month after request; this is not a good consideration, but made deceitfully, and therefore unlawful. Croo. 1. last publishe 774.

If one part of a Consideration, upon which a thing is to be done be against Law, and so void, yet if another part of it bee good and lawful, the consideration is good to ground the Assumpsit upon it, for it may be divided, and if any part of it bee good, it is sufficient to make the promise good. Mich. 23 Car. 1. B. R. Sayers Registr. 31. Co. 12. 102. Dyer 359. Churches Case. Pasche 7 Jac. B. R. Popham 32.

If I sell one my goods, on condition hee shall not sell them again; this is void. Coo. upon Lit. 223. But if the Contract bee executed, that I have delivered the goods, and have my money, perhaps the condition only is void, and the Contract good.

Sale of the same thing twice.

If I sell my horse first to one, on condition that hee pay mee five pound such a day, and before the day I sell him to another; this second Contract seems to be void, albeit I bee not paid my five pound, and that I seize him again, and therefore the first Contract is good. And a man may not sell that which is none of his own. Plow. 433. Coo. upon Lit. 309. Pe[illegible] sect. 85.

Promise of more to a Sheriff than his due fee.

If I, being an Executor, have a Judgement in an Action upon the Case in an Assumpsit, and a friend of mine, in consideration that the Sheriff will execute the Writ, and that for six pence given unto him by the Sheriff, promise the Sheriff threescore pound; this was adjudged to bee unlawful, and that the six pence given did not make the promise good. Croo. 2. 103.

If the Sheriff have a Fieri Facias against one of his County at my Suit,

Suit, and I tell him such goods are the Defendants goods, and shew him where they are, and promise the Sheriff, that if he make execution of them, that I will give bond to the Sheriff, when he shall require it, of any reasonable summe, to save him and all others harmlesse for medling with them: this Contract is certain enough, and lawful, and he need not shew the tenor of the bond, or by whom the Request is made. Croo. 2. 653.

That if the Sheriff will do execution, he will save him harmless.

If one, that is no party to the Suit, say to the Sheriff, that hath taken one upon a cap. ad satisfac. let him go at large, and I will pay you what damages you shall sustain thereby; no Action will lye upon this, for it is against Law. Herlcys Rep. 175. So if I promise any one that hath such a Prisoner, mony to let him go. Bulstr. 2. 23. 213.

Promise of mony for an escape

If one promise me a hundred pound to solicite his business, no Action will lye for this. Owens Rep 123, 124.

If I, in consideration that another will go to Rome in three daies, promise one ten pound, or have given one ten pound, and for this he promiseth to go to Rome in three daies: Or in consideration that he shall enfeoffe a Corporation of such a name, and there is none such: Or if it be to enfeoffe a mans wife, or if it be to do a thing that afterwards becomes impossible; these, it seems, are void Contracts; and if mony be paid, or any thing given for it, hee may happily recover the thing again. See for this. Coo. 1. 84. upon Lit. 207.

Consideration about a thing impossible. Part 29.

If the consideration of a promise be Executory, as in consideration, that you will serve me a year, I will give you ten pound, here the Action may not be brought, till the service bee performed. But if it be a promise on either side Executory, it needs not have a performance, for it is the counter promise, and not the performance that makes the consideration, yet it is a promise before, though not binding. Hobb. pl. 128.

Consideration Executory, Executed and pursued or not.

If one in consideration, that I will give my consent, that my father shall make an assurance to him of his Land, promise to give me ten pound, this is good; And in this case, it seems, if I give my assent, although no assurance be made, yet I may recover the ten pound. And especially, where by the agreement, I promise to give my consent. But if I had not given my consent, I could have had nothing; Fuller's Case Godb. Rep. 28. 29 Eliz. Co. B. pl. 106. And if the assurance be made to him and his Wife, or to another to his use, it will bee a question if it be good, because he doth not pursue the agreement.

Promise of money, to give an assent to a thing.

Mutual promises.

If the consideration of a promise be Executory, it must be duely and fully executed and performed before any Action can be brought upon it; And if it consist of two parts, both must be performed before the Action can be brought. And therefore, if one promise to me ten pound, to help to gather his Tithe hay and Corn; and I help him to gather his Corn onely, and not his hay also, I cannot recover the ten pound in this suit, Mich. 7. Jac. B. R. 9 H. 7. 13. Survey of the Law, 89. 91. But if he have no Tithe-hay to gather, it is good enough.

Mutual promises.

The Count; Pasch. 14. Jac. B. R. Fuller's Case, was this. That the Plaintiff declared, that A. was indebted to him two and thirty pound, for which he sued A. And that it was agreed between him and A. to stay the suit, and if he paid it not before Michaelmas, he should give security, &c. In this Case it was held, that he need not shew that he did surcease his suit; for it is a Reciprocal agreement. But if A. in consideration, that the Plaintiff shall surcease his suit, promise to pay it, then he must shew that he did surcease. Pasch. 14. Jac. B. R. Fuller's Case.

If one in consideration of divers summs of money, he hath received of divers

Promise to pay money, he hath received for mee. Count.

divers persons to my use, amounting to four and twenty pound, assume to pay this to mée; this is good, and I may have this Action for it. And I need not in my declaration, shew of whom he received the money. Trin. 14. Eliz. B. R. Beckingam and Lambert.

Promise on Condition

If I promise and assign my interest in a Lease, to another, on condition that he will get the consent of the Lessor, and that he will pay mee so much, as I. S. shall Arbitrate, the consent must be had, and the debt Arbitrated, before any Action may be brought on the promise. 14. H. 8. 20. Brownl. 1. part 14.

Reciprocal promises. Part 30

If one promise mee twenty pound by Bill, and I promise to deliver him the Bill, and he promise to bring two sufficient Sureties, and with them to give Bond for the money by a day; this is a good promise on both sides, on which, either of them may sue when they will. Mich. 38. 39. Eliz. Gowers Case, Adjudged.

Conditional promise.

If one sell mée a Horse for ten pound, on condition that I pay him this ten pound in Corn; in this case I must pay him in Corn, or he may have this Action for his remedy. Fitz. Dec. 68.

Release to, or Sealed to one, and he sealed it to another.

If one promise to mée, in consideration, that I will seal a Release to I. S. he will pay mée ten pound, and after, at his request I seal the Release to I. D. and not to I. S. in this case I cannot bring the Action for the money, because I have not pursued the consideration. Trin. 4. Jac. B. R. Cransfield and Greene. Croo. 1. 3.

Promise of pay for work.

If one promise to mée ten pound, when I have done such a work; this is a good contract, and when I have done the work, I may sue for it. Plow. 5. 44. Ed. 3. 22.

Promise to pay money upon the delivery of Goods.

If an agreement be made between I. S. and my self thus. That if he shall deliver mée twenty pounds worth of Cloths, or assure mée such a peece of Land, that I shall pay him twenty pound; this is a good Contract, and after the performance of the condition, and not before, hée may have his Action upon it. As where I promise to make new Pales, if I may have the old Pales; I must have the old, ere I am bound to make new; and I am not bound to look after the old Pales my self. 33 H. 6. 43. 27 H. 8. 44. Perk. sect. 7. 13.

Promise of mony for building of a house.

If one promise to mee to build a house, or do any such like thing, and this done, I promise to pay him ten pound for it; the thing must be done before hee can sue for the mony.

Promise of mony for diet.

If one promise mée three shillings a week for his diet, and lodging, and I finde him diet, but not lodging, in this case I may not sue for the three shillings a week upon this Contract, but so much as I deserve for the diet and lodging. 9 Ed. 4. 1. Broo. 2.

Consideration past.

And therefore where the Plaintiff I. S. emisset equum, at such a price, and the Defendant ad tunc & ibidem ratione præmissarum, did assume to pay the mony; this was adjudged to be naught, for the sale did precede the consideration. Pasche 9 Jac. Farmers Case. B. R. And where the Plaintiff declared, quod cum the Defendant was indebted to the Plaintiff twenty pound, for meat, drink, and lodging, for himself, and two others, that hee did such a day assume to pay it to him; that this was not good. Curia. Steedmans Case.

Promise to make a Release, it must bee a good Release. Pleading.

If it bée a part of a consideration to make a Release, it seems it must bée shewed to bée a good Release, and therefore safest to bring it, and shew it to the Court to bée judged upon, if it bee good, or not. Croo. 1. 13.

If a Father promise mony, if the party to whom hee promiseth ad instantiam, &c. shall marry his Daughter; it need not bee shewed that it

it was at his instance, but it shall hee presumed. Croo. 1. 141.

If one have a Lease for years of Land, the Reversion in B. and in consideration of ten pound paid by A. to him, and of ten pound to be paid to him upon the procuring of a new Lease to him, hee doth promise to surrender his Lease, and procure him a new Lease before the end of Trinity Tearm; this is good in the consideration and promise, and the last mony not to bee paid till hee procure the new Lease. Croo. 1. last publisht. 249. Promise for mony, to get a man a new Lease of Land.

If one promise mee, that if I will serve him for a year, and manure his Land, &c. hee will pay mee forty shillings; this is good; and if I serve him the time, I may sue for the mony, but if I depart within the time, I have lost the mony. Croo. 1. last publisht. 250. Promise of mony for service.

If A. be indebted to mee a hundred pound, and B. in consideration that I will abate ten pound, and forbear the fourscore and ten pound till Michaelmas next, assume to pay mee the fourscore and ten pound, if hee do not pay mee; in this case, if I shall release or discharge that ten pound, and forbear to sue for the other till Michaelmas, I may have this Action. But if I sue for the fourscore and ten pound before, otherwise. Croo. 1. last publisht. 477. Promise to pay anothers debt upon abatement

If I, in consideration that a Lessée for years of Land, shall at my request surrender all his interest to mee, and will bee contented that I shall have it to use at my will, assume to pay him threescore and ten pound, when I shall bee thereunto required; this is good, and actionable, when a good surrender is made, and an Actual Request performed, and not before. Croo. 2. part last publisht. 487, 488. Promise of mony upon a surrender made.

If one in consideration that I will relinquish such a Suit, promise to discharge mee of all the Suits of I. S. and I do relinquish; yet this is no good consideration; for I may relinquish it to day, and begin it to morrow again. Croo. 1. last publisht. 561. Promise upon a relinquishing of a Suit, to discharge other Suits.

If one, in consideration that I have promised to pay him such a summe of mony such a day, and place, promise upon payment thereof, to surrender a Lease unto mee, that hee hath of my Land; this is a good promise, and Action will lye upon it. But I must bee sure to tender the mony, and say in my declaration, that I have paid it, or tendred it, and it was refused. But if the promise be, that in consideration that I have assumed to pay such a summe, that hee hath assumed to surrender; in this case hee is to surrender, and rest upon my promise for the mony. Croo. 1. last publisht. 889. Promise upon payment of mony to surrender a Lease. Mutual promises.

If A. B. sell to C. D. 43 Loads of Timber, to be carried from B. in D. in the County of Essex to Lymehouse in London, and in consideration that I will go with him to the said C. D. and help him further in the selling of sixteen Loads of Timber, and procure Rafters to be laid upon Hay, and get others to assist him in laying the said Hay and Timber, and would carry the same Timber to the same place in Lymehouse, for sightteen pence a Load, hee doth assume, &c. this promise is good enough, but before I can sue upon it, I must shew, that all this, which was futurely to be performed, is executed and done. Croo. 2. 583. Promise of mony for work to be done.

If an Executors Testator were indebted to mee three and thirty pounds, and in consideration that I will forbear to sue the Defendant, till hee hath got execution upon such a Judgement, hee doth promise to pay my three and thirty pound upon request; this is a good promise, on which I may have Action. Croo. 2. 593. Promise to pay mony when a Judgement is had.

If one promise to mee, in consideration that I will make him a Lease (and say not what Lease) of such Land, that hee will pay mee ten pounds, Consideration Incertain, Insensible, Repugnant, &c.

Forbearance of Suits Frivolous. Part 31.

this consideration is void, and therefore the promise naught; for it may be a Lease at will, and then hee may avoid it as soon as it is made. So if I promise to one, in consideration hée will forbear his Suit against mée, and say not how long, these are frivolous, and naked promises, ex quo non oritur Actio. So if one promise to relinquish his Suit; for, hée may begin it again after hée hath relinquished it. Pasche 39 Eliz. Burkins Case adjudged. Co. B.

Averment.

Pleading.

Debt.

If one sue for 20 l. for meat, drink, and lodging, for himself, and two others, that he, in consideration hée was indebted twenty pound to the Plaintiff, so assumed to pay it; It is said, this is not set forth certainly enough. Steedmans Case. Curia. And yet where A. sued B. and declared that B. was indebted to him ten pound for Wheat, Agistments, and wares had of the Plaintiff, and in consideration thereof, did assume to pay the same to the Plaintiff; this was adjudged certain enough, and good. And yet this would not hée good in an Action of debt upon the very Contract. Hobb. Rep. pl. 8. Nor is it sufficient to set forth in this Action; That where the Defendant was indebted to the Plaintiff ten pound, that hee promised to pay it to him; for perhaps it was for a Rent, on a Lease by Deed, or a Debt by Obligation, in which cases this Action will not lye, unlesse it be upon the consideration of the forbearance of it. Adjudged. See Hobb. Rep. pl. 365. Bulstr. 1. part 153.

Promise of a debt before due.

Paululum temporis.

If one, promise to mee, that in consideration that I will forbear him a debt hee doth owe mee, for a little time [or for a short time [or for a convenient time] that hee will pay it; these considerations, and so the promises grounded upon them, are void for incertainty. Croo. 1. last publisht. 759. So where the agreement is aliquo tempore] for some time. Bulstr. 1. part 92. 14 H. 8. 18, 19, 20. Yet see the Case in Croo. 1. 175, 316.

Incertainty.

If I sell my Horse for ten pound, to be paid in a short time; this bargain is void for incertainty: And therefore if the other that buyes, take or leave the Horse with the Seller; it seems hee may take and keep, or sell his Horse to another at any time, till hee have received the ten pound. Bulstr. 1. part 92. 14 H. 8. 18, 19, 20.

Taylor. Carrier. Smith. Solicitor.

If I retain a Carrier to carry my goods, or a Tailor to make my Cloths, or a Smith to shoe my Horse, and say, that I will content him; this Contract is good and certain enough. Croo. 2. part 263. And this Action will lye for it. So for a Solicitor that hath laid out mony. Croo. 1. 76.

Forbearance.

Incertainty.

If one, in consideration that I will not sue one I. S. for twenty pound hée oweth mée, assume to pay it before Michaelmas next; this is not good, and the forbearance afterwards for a reasonable time, will not make the promise good. Croo. 1. last publisht. 455.

Contract Frivolous and idle.

Agreement to pay mony in a short time, is incertain, and no good Agreement. Croo. 2. 250. 683.

Wager.

If two lay mony on a wager, and put it into a third mans hands, hée that wins will have it, and hee that loseth will have no remedy. Agreed at Sarum Assizes. 9 Car. 1. And if it be about a Horse-race, and be clearly made, it may hee good and binding. But the Law doth not favour such vain sports, nor the Contracts that are made about them. By Baron Thorpe at Glouc. Assizes. 1654.

Divers considerations, some good.

And yet where divers considerations be alledged by the Plaintiff, and some of them are frivolous, and void; yet if any of them be good, the Plaintiff shall recover. Adjudged. Croo. 1. last publisht. 149.

Forbearance.

If I have a Judgement against an Administrator for the Intestates debt,

debt, and hee promise mee, in consideration that I will forbear to sue execution against him, until Octab. Mich. that hee will pay unto mee the summe recovered at Mich. this is a good consideration, and if hee pay mee not at Mich. I may sue before Octab. Mich. Croo. 1. last publisht. 758, 759.

There was a wager laid between A. and B. concerning the quantity of yards of Velvet in a Cloak, and each of them delivered into the hands of C. ten Angels, and each of them agreed, that if there were ten yards of Velvet in the Cloak, that then they should bee delivered to B. and if not, to A. this is good, and may be pursued accordingly. Croo. 1. last publisht. 870. Wager.

If I. S. and my self be talking of the buying of two of his fat Oxen, and I promise to pay for them seventeen pound in a short time, and hee doth thereupon assume to deliver them unto mee; this promise to pay in tra breve tempus, is incertain, and no consideration at all; and therefore not good to ground an Action upon it. Croo. 2. 250. Promise incertain.

If one owe mee two hundred pound for a Legacy given to my wife, and if I will forbear it, hee doth promise mee to pay mee according to the rate of ten pound by the hundred; this promise seems to be somewhat incertain, and that it is not good. Croo. 2. 603. Consideration to forbear, and say not how long.

If I arrest B. for a debt due to mee, and C. assume to mee, that if I will not prosecute this Suit, that hee at such a day after will pay mee the debt; this is good. Judged. Affirmed in Error. Croo. 2. 397. Consideration not to prosecute, how taken.

If one covenant, in consideration of a Marriage-Portion, to assure Land of four thousand pound a year, ultra Reprisas in England, such as Sir R. Crew, and Sir H. Yelverton shall advise; this promise is good and binding; But if hee have cause to shew how hee did perform it, hee must set forth the particulars. Bendloes 127. Part 32. Promise for mony to assure Land.

If one, in consideration of ten shillings by mee given to him, promise to pay mee ten pound, if hee do not prove that I had a childe by such a woman; this Contract may bee good enough, and the proof may bee in the Action brought upon the Assumpsit. And it seems, it may be done at any time during his life. Bendloes 139. 10 Ed. 4. Wager.

If one promise to mee, that if I will seal a Release to I. S. hee will pay mee five pound; this is good. But if I averre, that I, by the appointment of him, delivered the Release to B. to the use of I. S. this is not well pursued and performed. But otherwise, if it had been by the appointment of I. S. himself. Noys Rep. 18. 8 H. 7. 13. a. Promise for a Release to pay mony. Not pursued.

If one owe mee mony upon an Obligation, and I being in talk to sue him, hee, in consideration that I will defer the payment of the mony, and not sue him upon that Obligation, doth promise to pay mee; this was adjudged a good consideration, and the deferring of the Suit in such a case shall bee intended for all the life time of the Obligee, and that if hee sue, the other may have an Action of the Case against him for it: But if the consideration were to forbear paululum temporis, this were not good. Noys Rep. 83. Promise for deferring the Suit to pay mony. How to be taken.

If one, in consideration that I will make him a Lease of certain Land at such a Rent, assume and promise to give mee a horse; this is good: But if I sue for the horse, I must shew that I have made such a Lease, without reservation of such a Rent; this will not warrant the Action. So if one say to another, make mee a Lease for one and twenty years, and I will give you a horse, and hee make mee a Lease for threescore years; this is not sufficient, albeit it be better, because hee hath not precisely pursued the Agreement. So if one say, Go and do such a business Pleading. Averment. Consideration pursued.

at York, and I will give you forty shillings, and he afterwards hearing that he dwelt some fore miles on this side York, saith to him, Do this businesse for me at your house, and this shall suffice; yet this notwithstanding, if he go not to York, and doth this work there, he can never have the forty shillings. Bulstr. 3. 222. 35.

If the consideration be to lend me ten pounds for a year, to lend some of it for a year, and some of it for lesse than a year, will not be a performance. And if the consideration be to pay one ten pounds in gold, and he pay it in silver; this is not sufficient. Yelverton's Rep. 87.

Considerations how to be taken.

If an Assumpsit be grounded on two considerations, one that may, and another that may not be performed; if that which may be performed be done, it is good enough: But where the Action is grounded upon that which is, and that which is not performed, it will fail. As where one, for five shillings paid and five shillings to be paid at a day to come, doth assume to do a thing, it must bee averred to be done; for if the first five shillings be not paid in hand, or the other were not paid at the day, no Action will lye upon it: If the one five shillings be not paid, or if bee not averred, that the other five shillings was paid at the day, the Plaintiff hath failed of his Assumpsit in the one case; and the declaration is insufficient in the other, for hee hath made a departure from the consideration. Popham. 32.

Sect. 7.

3. For the Manner and Matter of the Promise, Covenant, and Assumpsit. And what shall bee said a good Promise, Covenant, or Promise as to this, to ground this Action upon, or not.

As touching this point, it is to be known,

1 For the Manner of the Promise or Assumpsit, and the words thereof. Part 1.

1. As to the Manner of the words of a Contract, or Promise: That it matters not in what form of words the Assumpsit is made, so the sense be certain and clear. And therefore if one promise mee twenty pound to do a work, or when I have done a work, or if I do a work, or so as I do a work; all these are good Assumpsits. So if one promise mee twenty pound to marry his Daughter, or if I marry his Daughter, or with the Marriage of his Daughter; these are good Contracts and Assumpsits. So if one shall say to mee, if you will satisfie mee, I will do such a work. Plow. 5. 305. Nor is the party that is to sue upon a Contract, to declare in the very words of the Contract, but to take up the substance, and sense thereof, and the same to put into a formal way of pleading. See after part 4, and 5. of this Section.

2 For the Matter of the Promise or Assumpsit.

As to the Matter of the Contract, or promise it self, this is to be known. That to make it such as upon which this Action may be ranged, it must have these things in it.

1. The thing promised or undertaken must be lawful.
2. It must be possible to bee done.
3. It must be clear and certain.
4. It must be co-hering, and agreeing in it self, and with the consideration.
5. And it must be serious and weighty. And therefore let a Promise, or undertaking be made amongst persons never so well qualified, and upon never so good a consideration; if the thing promised be either malum in se, or malum prohibitum; Or if it be altogether incertain and doubtful what it is; Or if it be impossible to be done; Or if the thing to be done

done be a frivolous and vain thing, no Action will lye upon it. As may appear in the following Cases.

If the thing promised to be done by the due party in lieu of a good consideration by the other party, be either malum in se, as to kill a man, or to commit any other Felony, or to beat a man, or to burn a mans house, or to forswear a mans self, or the like, or malum prohibitum, as to be a Forestaller, Regrator, Ingrosser, Maintainer of Suits, or to erect a Cottage against the Statute, or the like. Or if the promise be that a man that hath the Fee-simple of his Land, shall not alienate his Fee-simple Land, or being Tenant in tail, that he shall not suffer a Recovery of his entailed Land; or if the promise be, to save or keep a man harmless, whatsoever hee shall do; or that a man shall not use the thing he hath bought, or take the profit of his Land, or the like, or if it be, that a man being an Officer, pro bono publico, shall not execute his Office; or that hee shall do against the duty of his Office, as being a Sheriff, or Gaoler, that he shall suffer this prisoner to escape; or if it be, that a Husband-man shall not sow his arable Land at all; or that a Tradesman, or workman shall not use his Trade at all, or for a time, or the like; this contract is naught, and the promise will not binde, nor bear Action. And if hee hath paid mony, or delivered any thing in lieu of it, hee may perhaps have it again; So where there is an Usurious, or Symoniacal Contract in the Case, or it tends to maintain a Monopoly, and the like. And so generally (whatsoever for the matter of it) if the consideration will make the Assumpsit void, the same in the promise will make it void. See for this before. Sect. 6. part 27, 28.

About a thing unlawful, or against Law.

For Contracts in Deeds solemnly sealed and delivered, such as are Feoffments, Leases, Obligations, and the like, that have such matter in them are void. And therefore a fortiori, these Parol Contracts should bee void, for these causes. And yet it is said in Marth. Rep. pl. 238. by a Judge, that it was adjudged, that although bonds, &c. of this nature are void, yet Assumpsits are not so; as an Assumpsit not to use ones Trade, &c. But Quære for the Law seems one in both Cases, especially if it be a total Restraint. And see for all this, Croo. 1. 101. and 1. 53. super Lit. 206. Dyer 304. Plow. 64. Fitz. Obligation. 13. Coo. on Lit. 206, 207. 219. 223. 224. 227. Perk. sect. 723. 727. Dyer 252. 347. 356. 17 Ed. 4. 4. 9 H. 7. 21. 10 H. 7. 16.

But if the thing undertaken and promised to be, or not to be done be in its own nature good, or indifferent, and not malum in se, or malum prohibitum; As if it be to pay mony,

To forbear a Debt, or a Suit for it. Croo. 2. 47.

To become Surety for another. Croo. 2. 18.

To enter into a Judgement, Statute, or Obligation. Croo. 2. 652.

To purchase Land for another, and to give it him.

To pay a Rent, or Annuity. Palche 9 Jac. B.R. Collins Case, Croo. 2. 598.

To acknowledge satisfaction on a Judgement. Trin. 38 Eliz. B.R.

To deliver up a Statute, or Obligation.

To go such a Voyage. Croo. 1. 179.

That an Attorney may gather and retain my Rents for his Fees, or another for a debt I owe him. M. 9 Jac. B.R.

To heal a disease in man, or beast.

Not to molest one in a Suit.

To save one harmlesse for any undertaking or Action that is lawful. M 9 Jac. B.R.

To make some estate of Land, or grant a Rent. To surrender Land. Croo. 1. last publisht. 188.

Not

Not to sell Goods or Land to such a man, &c.
To plow Land.
Not to revoke a Letter of Attorney.
That a man shall enjoy Land. Trin. 38 Eliz. B. R.
To seal a Deed.
To build a new, or to amend an old house.
To plant Trees.
Not to meddle with an Executorship.
To keep goods safe.
To deliver, or not to deliver goods. Old B. of Entries. 4. Bendl. 151. Croo. 2. 503.
To make a Partition sure.
To give Wedding Apparel.
To marry with another. Croo. 1. 175. 1. last publisht. 61. Hobb. pl. 479.
To make a Release of Title of Land, or other thing.
To discharge any Engagement.
To defend a Title of Land.
To perform Covenants.
To stand to an Award. To pay mony, or to abide an Award. Coo. 5. 78.
To perform a Will. To pay a Legacy.
Not to oppose the probate of a Will.
To give Land or Goods by his Will.
To appear in a Court.
Not to be Surety for another.
Not to play at Cards or Dice.
That goods shall come safe to Dale. Coo. 5. 78.
To make satisfaction for a wrong done.
To keep a Prisoner safe. Winch. Rep. 48.
To buy Wares of him. Croo. 2. 596.

All these, and such like things as these undertaken, are good and lawful. And so generally, whatsoever (for the matter of it) may bee lawful and good, in the consideration of a promise; this also will bee good and lawful in the promise it self. And if there bee a good consideration to induce it, will give this Action. See more for these things. Plow. 308. Kelw. 69. 77. Finches Law. 49. 14 H. 6. 13. 3 H. 6. 13. 21 H. 7. 41. F.N.B. 145. 19 H. 6. 49. 2 H. 6. 55. Lib. Intr. 3. 4. 13. Bulstr. 1. 38. 3 H. 6. pl. 33.

About Usury, or an usurious Contract. Part 2.

If the Agreement be personal, and parol onely, and there be an Usurious Contract included in it, it is void, and this Action will not lye upon it: But for the opening of so much of this as is needful to our purpose, here take these things,

1. That then it is an usurious and unlawful Contract, where more is taken or agreed to bee taken directly or indirectly for the loan of any Mony, Wares, Merchandizes, or other Commodities whatsoever, than what is appointed by the Statute. Plow. 282. As if I owe one a hundred pound, and promise him a hundred pound more to forbear it for six months; it is naught. Trin. 20. Jac. B. R.

2. That this may bee by Fines, Feoffments, and other kinds of Assurances by Deeds whereof wee shall say nothing in this place.

3. The punishment of it is, that hee that takes it, doth lose three times as much as hee takes; and the Contract made about it (of what nature soever it bee) is void. See the Statutes of Usury. Coo. 3. part of his Institutes. chap. 70.

4. Where

4. Where the Original Contract is usurious, all the assurances that depend upon it, are void; But if hée take not what is agreed upon, hée shall not pay the treble value of it. Pasche 7 Jac. B. R. Corslets Case.

5. The taking of something in the by, as a pawn for security, will not make the Contract unlawful. Trin. 13 Car. 1. B. R.

6. Nothing that is given to a Broker in the by will make the Contract usurious and unlawful. By Just. Bridgman. Hill. 7 Car. 1.

7. Regularly there can be no usurious Contract, where the principal is lost, except by notorious Circumstances there be an apparent corrupt bargain. Corslets Case. Pasche 7 Jac. B. R. Brownl. 1. part 180.

8. If the Original Contract be not usurious, no matter ex post facto will make it so. And therefore to take his use before the end of the year, where the Original Contract is not usurious, will not make the Contract void. Thurslies Case, Hill. 7 Jac. Co. B. Brownl. 1. part 73. 191. Bulstr. 1. part 17.

9. Where upon the first Contract the Lender is not sure of any benefit, but hee doth secondarily hope for some at the will of the Borrower onely; this is not an usurious Contract. Coo. 5. 69.

10. A woman that hath a husband, or a man and his wife, and a third person, cannot make an usurious Contract within the Statutes. Trin. 13 Car. 1. B. R.

11. No stranger, not privy to the first Contract, may be punished for it. Brownl. 1 part 85.

12. If the bargain bee directly so made, that the party may either take or refuse it, it is not an usurious Contract. Stiles Regist. 74.

13. If a Contract be made so, that re vera it is usurious; and yet made so, that the Statute may be avoided, it is usurious, and within the Statute. Stiles Regist. 75.

14. Where a man runs a hazard to lose all, there the Contract is not corrupt; and therefore if one deliver to another, going with a Ship to fish in New-found-land, which Voyage may be in eight months, fifty pound, to pay threescore pound upon his return of the Ship to Dartmouth, and if it do not return, then to pay the principal mony onely, and if the Ship never return, that hée shall pay nothing; this is not an usurious Contract. Croo. 2. part 209.

15. If one lend thirty pound for half a year, to receive three and thirty pound, if the Son of the Obligée be alive, if not seven and twenty pound; this is not usurious. Coo. 5. 70.

16. If one owe mee a hundred pound, and hée and I agree to give thirty pound for the loan of it a year; and that hee and I shall be bound to another for this thirty pound; and I being indebted to one a hundred pound, and the debtor of my hundred pound, and I, are bound for this hundred pound to discharge his debt, hee not knowing any thing of this corrupt Contract; this will not hurt the Contract made by us, so as to make the bond wée have made, void. Croo. 2. 32, 33.

17. If one borrow a hundred pound, after the Rate of the Statute, and the borrower do after pay part of the principal, and all the use within the year, and the lender receive, or sue for it within the year; this is no usury: for no matter ex post facto, after the first Contract can make it so. Hill. 7 Jac. B. R.

18. If the Contract be, that the borrower shall give but a summe for the loan, as comes to the Interest onely, but he is to receive this mony for the loan within ten dates next following; this is a corrupt Contract. Bulstr. Rep. 1. 20.

19. If

19. If one borrow of mee six pound, to pay mee six pound by a day, and if hee pay it not by that day, that hee shall pay mee twelve pound; this is no usurious Contract. Thurslies Case, Broo. Oblig. 79.

20. It is not an unlawful usury upon a loan of mony for a year, to agree and take his interest quarterly, or half-yearly, so much as it comes to for the time. But to take the use at the beginning, or before the time, for more time than is past, is corrupt. Croo. 2. part 26.

21. Where there is not an usurious Contract precedent, although the lender do take more than is appointed, upon a just computing of the mony received by him, whether it fall out by the miscasting of the party, or by the mistake of the Scrivener; this is not within the Statute. Mich. 23 Car. 1. Siles Regist. 341.

22. The Case in effect was, A. was in debt to mee a hundred pound, and he doth promise to mee, that if I will forbear him half a year, that he will pay mee my mony and interest for it, being then five pound, and I sued for it in this Action upon the Assumpsit; and it was held by Justice Dodridge, and Justice Haughton, that the Contract was void, for Usury is against the Common Law. Trin. 20 Jac. Sanderson's Case. See Coo. 10. 102. Dyer 356.

About Symony. Part 3.

If there bee a Symony in a Contract: As if one for ten pound given by A. to him, or promised to be paid to him, promise to present A. to his Church being void. Brownl. 2. part 164. So if another besides A. himself give the mony to the Patron, or agree to give the mony, and hereupon the Patron promise to present, especially if A. be privy to the Contract. So if A. (the Church being void) contracts Symonaically with the Patron, to have the Presentation, and upon this corrupt Agreement hee doth present R. a man ignorant of the Agreement; yet this is a corrupt Contract, and void. For if any Patron shall receive, or take any mony, fee, reward, or other profit, for a Presentation to a Benefice with Cure; and in truth, hee that is presented, knoweth nothing of it, yet is the Presentation, Institution, and Induction void. But if the Presentee know nothing of the corruption, then is hee not within the Clause of a disability mentioned in the Statute by all the Judges. Mich. 8 Jac. Coo. on Lit. 120. Brownl. Rep. 2. part 164. Coo. 12. 101. And yet to sell, or buy for ones self, or another, the next Avoidance of such a Living for mony, or other reward; it seems this is not Symony. Mich. 8 Jac. B. R. But see Winchcombes Case, 14 Jac. Co. B. The Case was A. a Clerk, when the Church was full, agreed with the Patron to give him ninety eight pound, when the Church should become void, the then incumbent, being a very old sickly man, and agreed, that the Patron should grant the Avoidance to a friend of the Clerks, who did present him; this was held a Symonaical Contract. Brownl. 2. part 7. So a Contract was made by one with the Patrons Brother (the Church being then full) that if hee could procure three Grants of the next Avoidance to be surrendred, and get him to bee presented when it became void, that hee would make him a Lease of Parcel of the Tithes of the Rectory, and hee did during the life of the Incumbent, get the grants to bee surrendred, and all the rest is as done; and it was agreed to be void. See more Croo. 1. part 44. 241. 307. Bulstr. 2. part 182. Lanes Rep. 71. 73. 100. See Croo. 1. 263. 245. 257. That a Consideration to have mony, to procure one to be Rector of a Church is a Symonaical Contract, and unlawful Act, and that it is not so spiritual a thing, but that the Common Law takes notice of it. But in that Case the declaration was naught, for the promise is to pay him after hee is

Declaration.

Rector,

Rector, and he shews that he was Rector by his procurement upon this promise, which cannot be, for coming in by Simony, he is utterly disabled &c. And the same was adjudged to be Error, and the judgement reversed.

About Leases, made by Ecclesiastical Persons.

All contracts made by any Curate, of any Ecclesiastical living, with Cure, or any part thereof, for any longer time then whiles the Lessor shall be ordinarily resident, and serving the Cure of such Benefice, without absence above eighty dayes in one year, are void. Stat. 13 Eliz chap. 20. 14 Eliz. Chap. 11.

About Monopoly.

If any contract be made, that shall include within it a Monopoly. As where a Contract is made between one of a Trade that is usefull to the Common-wealth, and some other, to restrain him from the free use of his Trade (which is in effect to make him idle) to the end, to bring the Trade into a few, or into one man's hands; this is void Coo. 11. 54. 2 H. 5.

Not to use a mans Trade.

As if one for a good consideration, promise not to use his Trade; But to promise not to use it for a certain time, or in a certain place, as in such a Town, this some say is good. Bulstr. 2. 136. And yet some hold that Parol contracts of this nature are good; But that bonds in writing, sealed and delivered, are void, others hold the Contrary. See March. Rep. 77. pl. 121. and Croo. 2. 596. where it is adjudged, and resolved, that if a Mercer keep a shop in one Town, and his shop is furnished with old sullied wares, and he Contract with another Mercer, that if he will buy of him all his Wares in his shop, and give him for them what they cost him, that he will no longer keep a Mercers shop in that place; that this is a good Assumpsit. It is usual in London to let a mans shop, and wares to his Apprentice out of his time; and to agree with him, not to trade, in such a shop, or street. And if one for ten shillings promise to pay an hundred pound, if he henceforward keep any Drapers shop, in New-market this is good. Pasch. 18. Jac. Bragg. and Tanno.

If one assume that if he use his Trade, he shall pay an hundred pound. But if it be onely, that for good consideration he doth assume, that if he use it in Newgate-market, he shall pay him an hundred pound; this may be good. Bendlo. 89, 90. A. and B. agree, that A. shall sell to B. all his Mercery Wares, and take his shop of him; in consideration whereof, A. promiseth, that he will not set up his Trade in that Town; this is good. Adjudged. March. Rep. 77. Stiles Rep. 214. 215. see Noy's Rep. 98. March. Rep. 12.

If one in consideration of so much money, paid by mée to him, assume, that he will not exercise the trade of a Joyner in a shop, parcel of a house to him demised, for the Tearm of one and twenty years; this is good. Adjudged. Bulstr. 2. 186.

Champerty.

If A. be sued on a Bond, and I become Bail for him, and Judgement and Execution is had against mée: And the Plaintiff doth promise mée, so as I will pay him, he will assign mée the Bond and the debt, and make mée a Letter of Attorney to sue for it in my own name, this promise is against Law, and void, being Champerty. Trin 38. Eliz. B. R. Dixon's Case.

Not to plow his Land.

A contract, that a Husband-man shall not plow his Errable Land, is a contract of this nature, and void. So if one be ingaged, by any such promise, not to appear upon any Jury, or not to serve in any Jury; this were unlawfull and void, let the consideration be what it will. Bendl. Rep. 89. 90.

To make escape.

If the Sheriff promise the Prisoner he hath in his custody, for ten pound that he shall escape; this promise is void, and no Action will lye upon it. Coo. 10. 76. 102. Dyer. 356.

A promise made to an Attorney of the Common Bench, to pay him for soliciting a Cause in Chancery, is good: Said to bee adjudged. March Rep. 78.

To beat a man. If I promise for ten pound given to mee, to beat a man, this promise is unlawful, and void. Cro. 1. 257.

By Duresse of Imprisonment. If I arrest a man, to the end hee should engage himself to mee, for money, where none is due, and hee being in prison, doth so, so that the promise is made by Duresse of Imprisonment; this is void. But an Engagement by a Prisoner for a due debt to obtain his liberty, is good. Palche 9 Jac. B. R. But if one threaten to kill, beat, wound, or imprison mee, unlesse I will make him such a promise, and thereupon, and for this cause onely, I do it, let the promise be made to him that doth threaten mee, or to another, it is void, and the Action brought upon it may be avoided for this. But for this, see Bro. 76. 18. 9 H. 7. 24. 39 H. 6. 5. Brownl. 2. part 276. But the threatning of mee to kill, beat, wound, or imprison my Father, Mother, Childe, Brother, Sister, or Friend; or the threatning of mee to burn my house, enter upon my Land, or take away my goods, will not make such a Contract void. 15 H. 6. 17. 11 Ed. 4. 13. 8 H. 6. 8. Cro. 2. 9. 21 Ed. 4. 13. 18 H. 6. 21. 7 Ed. 4. 21. 20 Ass. pl. 14.

Part 4.

Execution. If one promise to mee an Officer, more than my due fees to do my duty, which is Extortion; this promise is not good to binde mee. Hill. 22 Jac.

Maintenance, Embracery, &c. If any Contract be made for the unlawful buying of pretended Titles, Maintenance, Embracery, or the like, for the raising, or continuance of unlawful Suits, or the like; these also will be void, and no Action shall be maintained upon them. 7 Ed. 3. 9. Fitz. Champertie. 6. But to promise an Attorney money for following of my Cause, or any thing for a lawful maintenance, is good, and will binde. Dyer. 356. Hobb. Rep. pl. 72. Cro. 1. part 118.

If a Contract be, that I shall stand to the award of I. S. so that it bee made before the tenth of May next, provided that I have notice fifteen daies before, and the Contract is made the ninth of May; this is void. So if I for ten pound paid, or promised, agree, and assume to go to Rome within three daies. So if for such a cause, I assume to make an estate in Dale, of White-Acre, worth ten pound a year, where re vera it is worth but five pound a year; or that I will bee Non-Suit in such an Action, and there is no such Action in being; or that I will assure such a piece of ground, where none such is. Perk. sect. 735. Coo. upon Lit. 207.

How an Assumpsit shall be taken.

Insensible Promise gone. If the Contract be, that where A. hath a Judgement against B. for twenty pound, and A. hath acknowledged satisfaction, that B. shall before such a day get a Warrant from A. whereby A. may be saved harmless from the same acknowledgement. Hill. 17 Jac. B. R.

If one for good consideration, promise to appear the next Term in such a Court, and die before the day, it is now at an end. So if one promise, that A. B. shall marry mee by such a day, and before the day hee marry mee himself. 21 Ed. 4. 58.

If one for good cause promise, that a man in London should cover a house in Hampshire. Bendloe's Rep. 139.

That a promise to one, in consideration he will be my Solicitor in several Suits I have depending against mee, that I will give him as much for his pains as he shall deserve; it seems this is not good. And that an Attorney or Counsellor, who hath a profession towards the Law,

Maintenance.

may

may solicite any Suit in any Court, and it is not maintenance. But otherwise it is of any other person. Hetley's Rep. 129.

If A. be indebted to B. thirty pound, and B. hath sued him, and hath a cap. utlegat. against him directed to the Sheriff, and one I. S. and my self being talking about it, hee doth promise mee, that if I will go to the Sheriff, and procure a special Warrant, and arrest A. that hee will give mee forty shillings; it seems this is void by Stat. 43 H. 6. Adjudged, for the Defendant. Noys Rep. 76. Extortion.

But if one Warrant for ten pound, that a Boat shall come safe upon the Thames, unto such a place; this it seems is good, and an Action may lye upon it. 34 H. 6. Broo. Action upon the Case. 107. That a Boat shall come safe to D.

If a Clergy-man pay the Bishop part of his first-fruits, and promise him the rest by a day, but doth it not; it is said, the Bishop can have no Action upon this promise at Common Law. And yet if hee have any special temporal damage by it, it seems there is as much reason an Action should lye for this, as for calling one Adulterer, Bastard, or the like. Coo. on Lit. 262. B. Coo. 4. 16. 17. Croo. 2. 473. 163. About a thing meerly spiritual

If A. contract with B. that A. shall keep B. without damage against I. S. for ten pound, in which B. is bound to A. this is a void contract for Incertainty: So if a contract be between A. and B. that A. shall pay his part of the summs of mony that shall be levied for the trying of the Customes of M. So if one promise to another, to save him harmlesse, and say not for what, or against whom; these contracts are insensible, and incertain, and therefore void: But if any sense, or certainty can be made of them, they shall be good, and an Action may lye upon them. Pasche 9 Jac. B. R. Coo. 10. 102. 76. Dyer 356. And therefore if the promise be to make good a house; this is certain enough, and shall be taken, that hee shall repair it. Mich. 21 Jac. B. R. Keyt's Case. So if one owe mee mony, and another upon some good consideration ameered to the promise, doth promise to make it good to mee; this is certain enough, and shall be taken in the vulgar sense. Mich. 21 Jac. B. R. About a thing Incertain, Insensible, Doubtful, or Repugnant. Part 5. Certainty. How it shall be taken.

If one promise mee for good consideration, to pay mee ten pound, or give mee a Gown such a day; this promise is certain enough and good. And if one of them bee not done at the day, this Action lyeth: And before the day, hee that is to do it, hath his choice to do which of them hee will: But after the day, hee to whom it is to bee done, hath election, which hee will take. Fitz. Debt. 89. 9 Ed. 4. 39. Election.

So if one promise mee, that for ten pound paid, hee shall give mee a horse, or a Watch such a day; this is certain, and good enough. Fitz. Debt. 89. So if the Agreement bee about twenty shillings for a horse in hand, and ten pound more to be paid at the death or marriage of the Buyer, for which hee shall become bound by writing Obligatory with Surety, that for this the Seller will deliver the horse upon request; this also is certain enough, and good. Hobb. Rep. pl. 79. Certainty.

If a Contract be between A. and B. that A. shall do such a work, and B. shall pay so much for it, but that A. shall not sue for the mony, this is repugnant and void, and will not binde on either side, till the work be done; and then perhaps hee that did it, may have an Action for his wages. 7 H. 6. 44. 21 H. 7. 24. 30. Repugnant. Certainty.

If one, in consideration that I have given and delivered to him a horse, and I have promised to him, that upon twenty pound paid to mee, I will deliver him such an Indenture, and hee assume to pay mee this twenty pound at Michaelmas; this is a good contract. Coo. 5. 37. Certainty.

If one promise to give so much for a thing as it shall bee reasonably worth; Certainty.

worth; this is void for Incertainty. Dyer 91.

If one, for good cause, promise to pay mee money in a short time; this is void for incertainty. So if one sell mee a horse for as much as I shall value him at. Bulstr. 1. part 92. Croo. 250. 683. So if one for good cause, promise to forbear mee his money for a little time; this is void for Incertainty. Pasche 8 Jac. B. R. Sackford's Case.

Incertainty.

If one promise mee, that if I will deliver wares to his Daughter, that hee will pay for them; and it shall be intended that hee will pay mee for them. Noys Rep. 83.

If one say to another, I pray trust I. S. with a hundred pound, without more words; this is no good Assumpsit, unlesse hee add these words, and I will see you paid, or some such like words. Yelverton 45.

Incertainty.

If a promise bee to pay so much money for Currance sold unto him, discomputando, for four months; it seems, this declaration is incertain, and so void. Stiles Rep. 29. Brunt and Sotwell. Trin. 23 Eliz. Stiles Rep. 27. 58. 63.

Incertainty.

If one promise, in consideration of a marriage, to leave half his estate to the party; this is certain enough, and good. Stiles Rep. 463.

Certainty.

For an insensible Contract. See more. Bendloe's. 150.

If I promise to another, so hee marry my Daughter, to give him as much as I shall give with any other childe; this is certain enough, and good, and if I by my will shall after give a hundred pound to another childe, hee that marryes my Daughter, may sue my Executor for this hundred pound. Glouc. Assizes. 6 Car. 1. Whitlock's Case. Trin. 17 Jac. B.R. Roll's Case. So a promise to give a childes part is certain enough, and good. Trin. 17. Jac. B. R.

About Marriage.

Certainty.

If I promise to one, in consideration that hee will pay mee ten pound, I will make him a Lease of such Land; this, it seems, is little worth, but void for incertainty; for hee may make a Lease at Will, and avoid it as soon as it is made; So if the promise be to forbear a Suit, and say not how long. Pasche 39 Eliz. Co. B. Burkin's Case.

Frivolous promise for Incertainty.

If a Contract be so, that part of it is, that the Contract shall be of no use; As that one of the parties shall bring no Action upon it, or shall have no benefit by it; this is frivolous and void. 7 H. 6. 44. 21 H. 7. 24. 30.

Frivolous. Part 6.

If one agree with mee, that hee shall not beat mee, it seems, this is void.

If one give mee twelve pence, and I, in consideration hereof, promise him, that if I do not cause him to bee whipt to morrow about the Cross in Glouc. I will give him five pound, and hee is not whipt, no Action will lye for this five pound, upon this frivolous promise. Hetley Rep. 4.

Promise to pay five pound, if he cause not the other to bee whipt.

If an Agreement be to make a Lease of Land, and it is not said when to begin, or end; this is altogether incertain and void; for it may bee a Lease at will, which may end as soon as it doth begin. Burkin's Case. M. 38. 39 Eliz. Co. B.

Incertainty.

If two lay money on a wager, and put it into a third mans hands, he that wins will have it, and the loser hath no remedy for it, to get his money again. By the Judges at Sarum Assizes. 9 Car. 1.

Wager.

If a promise be to pay money, and no time set for the payment thereof; this is certain enough, and good, and shall be paid presently. So if a promise be to make a Lease for certain years of Land, and say not when it shall begin; it shall begin presently. Croo. 10. 76. 101.

About payment of mony.

Lease for years.

If one promise mee all that hee can recover in such a Suit, or all that hee

Certainty.

he can get upon a Composition on such a Bond; these promises are certain enough, and therefore good. Trin. 19 Jac. B. R. Morris's Case. So if one promise to content mee for my work, when it is done; this is good enough. Mich. 17 Jac. B. R. Griffin's Case. So if one promise to give mee a childe's part, or as much as with any other childe, if there bee a good consideration annexed to such a promise, the promise may bee good, Id certum est, quod certum reddi potest. Trin. 19 Jac. B. R. Morris Case. Mich. 17 Jac. B. R. Griffin's Case. Trin. 17 Jac. B. R. Bolle's Case.

If one promise to mee all that hee can recover in such a Suit, or upon a Composition upon such a Bond; this is certain enough, and good. Trin. 19 Jac. B. R. Morris Case. Certainty.

If one promise to content mee for my work; this is certain enough, and a good promise; or in respect of my labour in another Realm for him, to pay mee my contentment for it. Godb. Rep. pl. 31 Eliz. Mich. 17 Jac. B. R. Griffin's Case. Godb. pl. 179. Certainty.

But here upon all these kinds of unlawful, impossible, insensible, incertain, doubtful, repugnant, and frivolous Contracts, these questions may be made.

1. Whether, if one of the parties have parted from any mony, in consideration of the thing to be done, or upon the promise, if hee may have his mony again; and how?

2. If the Contract be naught, for any of these causes, if this will make the whole Contract void, or not: And whether it may not be good on the one side, albeit it be naught on the other side; As where Reciprocal promises be, and one of them is lawful, possible, &c. And the other is not so, if this will make both the promises void?

3. If one give another ten pound to do a thing at that time lawful, possible, &c. but it doth after become impossible, unlawful, &c. if the mony be lost or not: As where mony is given by way to another, on condition hee shall stand to an Award, if it be made before Easter next, or appear such a time in a Court, and hee dye before the time.

4. What Relief may bee had in these Cases; and if none bee in Law, whether a man bee not reliievable in Equity.

See for these things. Coo. upon Lit. 206. 218. 223. 227. Perk. sect. 721, 723. 727. Croo. 1. 24. 46. Dyer 243. Coo. 1. 53. Dyer 263. 262. Plow. 272. 286.

The Cases that follow are of better Contracts and Assumpsits, If I sue another, and being ready for trial, he, in consideration I will surcease my suit, yet assume to assign me such a safe, and pay my costs; this is good, and if I stay my Suit, I may sue for it. But I must be first to say how much my costs are, or my declaration will not be good, and hee may demurre to it. Croo. 1. last publisht. 276. To pay mony in forbearance of a Suit.

If I in consideration that I will at Michaelmas next deliver as many quarters of Wheat to I. S. to his use, as he shall receive, and have before such day, that he will pay me such summe of mony before such a day, this is good, and hee shall pay as much as the same is worth. Croo. 1. last publisht. 1. To pay mony for Maulr. Part 7.

One declared in an Assumpsit; That in consideration he had sold and delivered a certain Copies of Silver lattin, at a sum proprium of the Defendant, and in consideration that hee had bought the said fish, and agreed to transport them from Bristow, to St. Lucas in Spain, and to retransport from thence the value of the fish to London or Bristow, secundum usum Mercatorum, the Defendant promised to pay to him a hundred and twenty pound upon the arriving of them in Porto St. Lucas. To pay mony upon the transporting of fish.

And

Pleading.

And shews, that all this was done, &c. And after many Objections to the form of the Declaration, it was adjudged for the Plaintiff. Croo. 1. last publisht. 229.

To pay mony for horse-meat to an Hostler. Request.

If one leave his horse with mée an Hostler, for six pence day and night, agréed upon till it come to twenty pound; I may recover it in this Action, and say, licet sæpius requisit, without shewing any special Request, and recover it all in one Action. Yelverton. 67.

To pay mony for Corn. Debt.

If I have a Lease for years of a Close, and Corn growing in it, and one, in consideration that I at his request have bargained, and sold him the Corn upon the same Close, assume to pay mée sixteen pound at such a day to come; this Action will lye for this sixteen pound, as well as debt. Coo. 4. 94.

To pay Rent whiles he enjoys the Land.

A. in consideration that B. will suffer him to enjoy White-Acre, promiseth to pay him three and fifty shillings a year Rent, so long as hee enjoyeth it; this is good. Stiles Rep. 463.

For Rent.

This Action will not lye for Rent upon a promise in Law, but it will lye upon a special promise of the party. Stiles Rep. 463.

About a Lease for years, or Land.

If one for mony sell mée Land, and promise to make mée an estate of it, or to give mée the possession of it, and do not; I may have this Action for my damage; and am not bound to sue for the Land in Chancery. 3 H. 7. 14. 14 H. 8. 15. 21 H. 7. 41. 2 H. 7. 11. 20 H. 7. 9. 22 H. 6. 44. Regist. 112. A. Bulstr. 1. part 112.

To pay mony if hee may enjoy the Land.

If one for good cause promiseth to convey Land to such a one as I. S. shall name; this is good, and if hée name, hee that promiseth must so convey it. Mich. 13 Jac. Co. B. Hulligo and Wild.

To enjoy Land quietly.

If a Lessor for good consideration doth promise mée his Lessée, that I shall quietly and peaceably enjoy his Land, during the Tearm, without the let of any person whatsoever; and by one with, or without Title I am expulsed, I may have this Action. Dyer 308.

Dame Gamble brought an Action against Terrel, and declared, that where hée made a Lease to the Plaintiff for years, rendring thirty pound Rent; and that the Defendant, in consideration that the Plaintiff would pay the Rent, that the Plaintiff should quietly hold and enjoy his estate, without interruption, and set forth, hée was ousted, and did not say by Title, &c. and yet it was adjudged for the Plaintiff. Mich. 7 Jac. B. R.

To save harmlesse.

If I being Lessée for years, let a house at will, and the Tenant, in consideration that I will suffer him to enjoy it till such a day, doth promise to keep mée harmlesse, and indempnified, by reason of his indwelling therein, and occupation of it, and for every farthings hurt pay mée five pence upon request; this is a good promise. Mich. 9 Jac. B. R. Coventry and Woody.

To purchase Land for another.

If one promise, for good cause, to purchase Land for mée, and doth it not, I may have this Action: And it will not excuse him, if hee do not his endeavour, albeit the owner will not sell it. 16 H. 6. Case 44. 12 H. 6. 8. 3 H. 7. 14.

Breach of Trust, Deceit.

If I give one ten pound for his promise, to get a Lease for mée, and hée gets it for himself. 3 H. 7. 14. See more of this, chap. 7.

Debt. To pay mony for a Lease.

If I make a Lease for years to another, and he for this promise to pay mée a summe of mony in gross, and do not, I may have this Action; if it be for Rent, I may have debt for this. Dyer. Sect. 45 Fitz. Debt. 129.

If I sell my Land for twenty pound to be paid mée, at a day certain, and it be not paid mée on the day, I may have this Action for it, albeit the

the Land bee not assured, for hee may compel mee in Equity to assure it. 3 H. 7. 14. 2 H. 7. 12. Equity.

If one lend mee money, and thereupon I enfeoffe him of Land, and by agreement hee is to have the profits of it till I pay him the money; this is good, and it seems, as long as hee hath the profits of the Land, hee may not sue for the money. Fitz. Det. 100. To enjoy Land till hee be paid his debt.

If one sell mee six hundred Coards of Wood, to be taken by his Assignment, and after hee sell four hundred Coards in the same place to M. to be taken where hee will, after hee assigns and sets out the six hundred Coards to mee, and I cut them down, and M. takes them away under colour of his Contract; I may have this Action against him. Coo. 5. 24. About Wood and Trees.

If a Tenant in Fee-simple, or Fee-tail, sell mee the Trees upon his Land for money, and this bee by word onely; it is a good Contract, and I may cut and take them away at any time (in the Case of the Tenant in Fee-simple) during his life, or after his death: And (in the Case of the Tenant in Tail) at any time during his life. Coo. 11. 50. Perk. sect. 58.

Timber-trees may be contracted for, whiles standing, as well as Goods or Cattle, and a Contract by word of mouth for them may be good, as for Goods and Cattle. Contract about Timber-Trees. Part 8.

If I bargain, and sell my Land, and the Trees upon it, and the Deed is not well executed, so as the Land doth not passe; in this case the sale of the Trees is not good: And yet if Tenant in Fee-simple for good consideration sell his Trees on his Land alone; the selling is good, and the Buyer may cut and take them away, either in the life-time of the Seller, or after his death: But if hee bee Tenant in Tail of the Land, the Buyer must cut and carry them away, in the life-time of the Seller, for hee may take them after his death. Coo. 11. 48. 58. Perk. sect. 50.

If one promise mee, that if I will lend him ten pound, and accept a Bond of A. B. of fourscore pound, and a Letter of Attorney to sue it, and will promise to release to him all Actions and Demands, that if A. B. pay mee not in such a time, that hee will pay mee the fourscore pound; this is a good promise, and Action will lye upon it. Crod. 2. 623. To pay mony upon a loan of mony, and a Release made.

If one promise to pay mony, or do a thing upon such a day next coming, or about that time; it seems if it is good, it must be done, near about the time. Noy. 16.

If a promise to pay mony be part of the Contract, this may be good, albeit no time be set when it shall be paid, for then it is due presently. Coo. 10. 76. 102. About payment of mony and no time set.

If my Debtor, who hath Statutes from other men, deliver them to mee towards my satisfaction, and dye; and one that is neither his Executor, nor Administrator, request mee to deliver him the Statutes, and hee will pay mee my debt; this is a good consideration and promise. Hobb. Rep pl. 7. To pay mony upon the delivery of Statutes.

One declares of a promise made to a Feme dum sola fuit, That whereas there was a communication between John Brown, Father of the Plaintiff, and Rob. Brown the Defendant, cousen of the said Robert, and the woman, when shee was sole, of a marriage to be had between Robert Brown and her, and John Brown promised to her, that if the marriage tok effect, hee would assure to them such Land, &c. And the Defendant did then promise to her, that if John Brown did not perform his promise, that the Defendant would give her a hundred pound, and that the marriage tok effect, and the Land not assured, &c. And it was adjudged a good promise. Crod. 2. last publish. 63. To pay mony on a Marriage.

If

On a marriage.

If one promise to mee a woman, that if I marry his kinsman, and outlive him, that he will pay mee twenty pound, and I do marry and outlive him; I may have this Action. Hobb. Rep. pl. 179.

Debt.

If one in consideration of marriage, doth promise to mee twenty pound, viz. ten pound, at Michaelmas 1631. and ten pound at Michaelmas, 1632. this is good; and the Action will lye for non paiment the first day. But debt will not lye till both the dates be past. Croo. 1. 175.

On a marriage.

If my Wife give one ten pound, upon an agreement of marriage of my Daughter, and he promise to repay it, if he do not marry her, and he doth not marry her; in this Case, I and my Wife may sue for this ten pound, and recover it. Albeit, I did never otherwise agree to it, then by the bringing of the Action. Croo. 1. last publisht 61.

Husband and wife, may sue.

If one A. owe mee twenty pound, and one B. owe to C. twenty pound, and C. in consideration that I will forbear my twenty pound, and compound with B. for his twenty pound and the interest, promise to pay the twenty pound, and twenty pound and interest, that shall be due; this is a good promise and consideration. Croo. 1. 198.

To pay mony upon forbearance.

If I be indebted to I. S. forty shillings, and give it to A. B. to pay him, and he in consideration thereof, doth assume to pay it, and discharge mee against him; this is a good promise. Croo. 1. last publ. 98.

Part 9.

If one in consideration that he shall occupy and enjoy such Lands, from such a day, for five years, promise to pay mee twenty pound for every year, at two feasts; this is a good Assumpsit, and for non paiment, every year I may have this Action. But if the promise be, that he shall enjoy the Land for five years, and in consideration thereof, that he shall pay mee an hundred pound in five years, viz. twenty pound per annum, there no Action will lye for part, till all the years be expired. Croo. 1 part last publisht 118.

To pay mony, if he may enjoy Land.

Promise of money for Granage to the Mayor of London.

So if one for money, agreed upon, promise to pay so much as shall bee due to the Mayor of London for his Granage, from an Alien; this is good. Dyer 352.

Indebitatus Assumpsit.

Assumpsit upon an Indebitatus, brought by A. against B. quod cum B. was indebted to A. fifteen pound, B. assumes to A. that if A. will forbear to sue B. untill the first day of Easter Tearm next, which was a month after, that *B.* would pay the same summe to him, the Plaintiff counts, that he had forborn accordingly to sue, and *B.* had not paid, &c. And it was adjudged, that Indebitatus Assumpsit generally, for twenty pound, to pay the said twenty pound, will not maintain an Assumpsit, without some consideration shewed. And that an Assumpsit, where the Plaintiff hath an Obligation for it, or a Judgement, or a Recognisance, or for Rent reserved on a Lease for years; in these Cases it will not lye. But in the principal Case, the Indebitatus is but the inducement to the forbearance, and here is a promise of forbearance Judged good; affirmed in Error; and the Judges ex officio, will take notice of Easter Tearm. Croo. 2. 549. Jenk. Centry 8. 71.

Forbearance.

Assumpsit for a debt on a Judgement, Bond, or Record.

Certainty.

Insimul Computasset.

The Count was, that upon an Insimul computasset, the Defendant was indebted to him, twenty pound, and promised to pay it &c. In this Case Crook Justice said, it was a good consideration, and Dodridge, That in every Action of debt, an Action of the Case is implyed. And when it appears how the debt grew due, then it is a good Assumpsit. Trin. 14. Jac. B. R. Cullimore and Eynison. Survey of the Law. 94. and in Croo. 2. 602. The Count was, whereas they insimul computaverunt, concerning the arrearages of such a Rent, issuing out of the Defendants Land, and about paiment of a Legacy of fifty pound, due to the

Consideration. Implicit Assumpsit.

Plaintiff

plaintiff by his Fathers device, and it was found, that three hundred pound was due to him, And the Defendant in consideration hereof, promised to pay it such a day; this is a good consideration and promise, on which I may have Action. Croo. 2. 602. Officer promise to do his office.

If I retain one as of my councel, or as an Attorney, and he doth promise mée to follow my suit, and doth it not, or doth it not faithfully and diligently, I may have this Action, albeit I give him nothing for it, for he is bound ex Officio to do it, albeit he doth not promise it. As if a Serjeant or Councellor, promise to plead for mée in my suit, or plead amisse. Or an Officer in a Court promise to do any thing belonging to his office; as a Clerke to inroll a Jury, or the like, and he doth it not; the party hurt hereby, may have this Action. 14 H. 6. 18. But see for this at large in chap. 10. Promise to pay, for soliciting suits. Fees of Officers

If one declare that I. S. being seised of Land, made a Lease of it to mée for years, by vertue whereof, I entred, and was possessed; and that the Defendant promised to mée, if I would seal and deliver to him a deed of assignment of my Lease and Interest, in the Land, he would pay mée, an hundred pound, and that I did seal and deliver a grant; this is a good promise, and the declaration good, albeit I do not say I was possessed; and albeit I do not alledge I did grant my Lease and Interest, but that I sealed and delivered a deed of grant. Croo. 1. last publisht. 50. To pay money for an estate of Land. Count.

If I let a man a stock of Cattel, for four years, to pay mée ten pound a year for Rent; this is a good contract, but I cannot bring an Action of debt, for the Rent, till the four years be expired, but I may have an Action of the Case for every Rent, if not paid, as the daies of paiment come. Coo. 2. 22. Dyer. 113. Money to bee paid at divers daies.

If one for good consideration, sell mée Land for money, and promise to make mée an assurance of it, or put mée in possession of it by a day, and do not, I may have this Action. Old Book of Entries, fol. 5. and recover damages; or if I will I may wave this, and compell him to make an assurance of the Land in Chancery, by three Justices. Pasche. 9. Jac. B. R. Jollyes Case. To make mee an assurance of Land. Equity.

If one promise mée, that upon paiment of such a summe of money to him, he will convey such Land to mée; and I pay the money, and he refuse to do it; I may have this Action. Bulstr. 1 part 89. Noys Rep. 88. Equity.

If one sell his Land to mée, for twenty pound I have paid to him, and now he refuseth to make my estate, I may have this Action. And if one sell mée Land, for money, and promise to make mée an assurance of it, or to put mée in possession of it upon request by a day, and doe not, I may have this Action. Old Book of Entries fol. 5. and recover damages, or if I will I may wave this remedy, and compel him to make my assurance in chancery by three Judges. Pasche. 9 Jac. B. R. Jolley's Case, see 21 H. 7. 41. Action &c. 45.

A. is indebted to B. and A. saith to C. if you will pay this debt to B. for mée, I will [illegible]re you such a Coppy-hold, for one and twenty years, as I. S. shall a[illegible]; and he adviseth, that A. shall seal a Letter of Attorney to two Tennants to surrender, and he shall give an Obligation for quiet enjoying, &c. this, if he do not, is Actionable, Croo. 2. part 104. To assure a Copy hold upon paiment of a debt.

This Action will lye for a Marriage portion upon an Assumpsit, and that against an Executor; albeit it be a spiritual contract. Upon this difference, if one doth promise to give another so much, if he doth marry such a one, or if he doth marry his daughter; for this he may sue at common Law; and his Executors, shall be liable for this after his death; otherwise About a marriage. Executor. Part. 10.

wise it is, where hee assumes to give so much with his Daughter in marriage; this Suit (it is said) must be in the Spiritual Court, and the Executor shall not be charged there in this Case. Bulstr. 3. 235.

Marriage. If I promise one, so hee marry my Daughter, to give him as much as I shall give with any other childe; this is good, and if after upon my will, I shall give a hundred pound to another childe, hee may upon this promise recover of my Executor a hundred pound. So agreed by the Judges at Glouc. Assizes. 6 Car. 1. in Whitlocks Case.

Marriage. If A. promise B. a woman, that if shee marry his kinsman, and outlive him, that hee will pay her twenty pound; this is a good promise, and if shee out-live him, and the mony bee not paid, shee may have Action upon it. Hobb. Rep. pl. 179.

Marriage. If one promise mee, so I will marry I. S. and assure her such Lands for her Joynture, that hee will pay mee a hundred pound, and make sure her portion six hundred pound; this is a good promise, and shall be taken as a warranty of the portion. Croo. 1. 146, 147.

Marriage. If I, in consideration that one will marry my Daughter, promise to pay him three hundred pound, scilicet, fifty pound by the year, during six years; this is good, and at the end of every year, this Action will lye for fifty pound. Adjudged. Sir Tho. Joscelyne's Case. Croo. 1. last publisht. 118.

Incertainty. Marriage. If one desire leave of mee, for his Son to bee a Suitor to my Daughter, speaking with mee about her, and I give out speeches in general, or say to the Father, that I will give her a hundred pound to him that shall marry her with my consent; no Action will lye upon these words for this mony. 2 Jac. B. R. Noys Rep. 11.

Marriage. If one promise to give mée as much at his death, as hée gave to any of his children, and that I shall have a childe's part; this is a good promise, or agreement for a marriage; the promise of childe's part is incertain, but as much as hée hath given to any childe, or to any childe but his eldest Son, is certain and good. Popham 148.

Promise to pay the Rent agreed upon. If I, at the request of I. C. let my house to A. B. for a year at such a Rent, and I. C. promise mée, that if hée do not pay my Rent, that hée himself will pay it; this is good. Croo. 2. 684.

Assumpsit to save harmless. Request. If my Servant be in Prison, and I request his Enlargement of A. and promise to save him harmlesse, and hée fail in it; I may have this Action: But I must request it of him, and set it forth in my declaration, that I did request it. Dyer 272. But if one become my Bail for my Servant, and after I promise to save him harmlesse; no Action will lye for this.

Request. A. doth promise to B. to discharge him, and save him harmlesse from all bonds in which hée shall be bound for the Son of A. at the request of the Son; B. sued, and shewed that hée as fidei Jussor was bound for the Son, &c. in this case it was held a good consideration, but that hée ought to have shewed precisely, the request of the Son, and that to say as fidei Jussor is not sufficient. Pasche 9 Jac. B. R. Som[illegible]n's Case. Lib. Intra. 11 C. sect. 1.

Count. If one, in consideration that I will be bound for him, doth promise to save mée harmlesse, this is a good Assumpsit; and if I be any way troubled, I may sue him upon it in this Action. So for any thing else that I shall do at his request. Pasche 19 Jac. B. R. Boyton and Vaughan. Old B. of Entries. fol. 11.

If one be in my house, and desire mée to suffer him to dwell there till such a time, and, in consideration thereof, doth promise to save mée harmlesse;

lesse; and for every farthing I shall be damnified in the interim, by reason of his possession, to pay him two pence; this is good, and hath in it a double promise: And if hee sue upon the last part, two pence for every farthing, hee must shew how many farthings in certain hee hath been damnified. Bulstr. 1. part 38. Count.

If one indebted to I. S. twenty pound, in consideration that I will at his request give my Bond to I. S. for it, hee assumes to save mee harmlesse; this is a good Assumpsit. Croo. 1. last publisht. 97.

If one pray mee to be bail for another in the Kings Bench, and promise to save mee harmlesse, and I do thereupon become his Bail, and any damage come to mee by it, I may have this Action for my Remedy. Croo. 1. part last publisht. 458. part 5. But hee shall recover no more in damages, than hee is like to sustain by it: And therefore if there bee an error in the principal Suit, by which it is like to become fruitlesse to the Plaintiff, therein hee shall recover damages accordingly. Croo. Idem.

If A. be Bail for B. in B. R. and B. promise to save him harmlesse, no Action will lye for this by A. against B. although hee pay the mony, if no Capias be awarded against the Principal, nor Scire facias against the Bail. Trin. 7 Jac. B. R. Bolls and Jones Error upon a Judgement, in Co. B.

If I bee an Inne-keeper, and one bring a Prisoner to mee, and requests mee to keep him a day and night, and promises to save mee harmlesse, and perhaps hee is falsly imprisoned, and I sued for false imprisonment of him; I may be relieved upon this promise, be his imprisonment lawful, or not, I am not to take notice of that. As where I bid a man go into anothers ground, and in my name to drive out the beasts and impound them, and promise to save him harmlesse: But yet if the Act in it self appear to be unlawful; as where I request you to beat another, and promise to save you harmlesse, it is otherwise. Winch. 48, 49. Unlawful Promise.

If one promise to mee, in consideration that I have paid to him forty pound for the Debt of A. my Son, that hee will deliver to mee all the Bills and Obligations, in which A. was bound to him; I may have Action upon this: But therein, it seems, must lay a request and denial to deliver them. And I shall not need to averre in my Count, that there were Bills or Bonds. Croo. 1. last publisht. 133. To deliver Writings, or Bonds, or Goods. Count. Averment.

If one, in consideration that I have paid him forty pound for the debt of A. my Son, assume to deliver mee all the Bills and Obligations, in which my Son was bound to him; this is a good Assumpsit. Croo. 1. last publisht. 133. Part 10.

If one deliver mee goods, and ten shillings, and for this I promise to keep them safe; this is a good promise. Broo. sect. 82.

If one promise to deliver a Deed upon request, and this is upon good consideration; this is a good promise; but the request must be shewed in the Count; but if it be of a thing due before or upon sale, the request may be shewed; but it is not necessary; and therefore in this case it is not traverslable, as it is in the first Case. Pasche 28 Eliz. Co. B. Request. Count. Traverse.

If one for good consideration agree with mee, to build, or to cover my house, or to set up a Mill, or to plow my Land, or to cut Trees, and carry them to my house. Regist. 109. B. Or to plant Thorns for mee. Lib. Intr. 13. sect. 1. or the like, and hee doth it not; I may have this Action against him for his not Fealance. 14 H. 6. 18. Action, &c. 8. 14 H. 6. 18. 3 H. 6. 36. M. 2 H. 4. 3. Action 23. 20. 3 H. 7. 14. So if a Smith undertake to shoe my horse, and doth it not. 14 H. 6. 18. Promise for work done.

To pay for work done.

If one retain mee to go a Journey, and promise mee as much as will content mee for it; this is a good promise to ground an Action, when I have done the work, and shewed him what will content mee, and demand it, &c. Croo. 1. last publisht. 132, 133.

How it shall be taken.
To ship Corn.

A. doth contract with B. and assume to him, to deliver a hundred quarters of Barley a Ship-board in such a Port, viz. at Barton Haven in Com. Ebor. and mention no time to be carried there, &c. A. assumes to carry them, and to bee at this Port with them. B. agrees to pay so much for the said quarters of Barley; A. doth arrive with his Boat there; this is a good Contract: But in this Case A. is bound to seek B. at the said Haven, and to deliver to him the said hundred quarters as aforesaid, A. doth it not, albeit B. hath performed his promise, and was ready there to receive it, B. brings this Action, it lyeth well. Judged. Affirmed in Error. Mich. 13 Jac. Atkinson and Buckle. Jenk. Cent. 8. Case 39.

Wages for work.

If one promise to mee, in consideration that I will do such a work, hee will give mee as much as I shall deserve for it; this is good. Bendl. 139.

An Attorney for his fees.

An Attorney may have this Action for his due Fees against his Client, that hath retained him without any promise made to him to pay it. Croo. 1. part 76. 140.

Servant for wages.

If one, in consideration that I will bee his servant, and follow his Suits, promise mée as much as I shall deserve; this is a good promise. Hetleys Rep. 129.

Quantum meruit.
To pay mony for feeding of sheep.

If it bée agreed between mee and another, that hée shall have leave to depasture twenty Sheep from Michaelmas to the second of April, upon my Land in Dale, and in consideration of this, shall pay mée as much for the same, as it shall be worth. Bendl. 147.

Quantum meruit.

If one promise mee, that if I will procure a Licence for B. from one C. my Lessor to sell a Tearm that hee hath, that hee will pay for my charges as much as I shall deserve; this is a good Assumpsit, and Consideration, though there be no need of a Licence; and I may have this Action upon it, if I procure the Licence, for the procurement of it, though vain, is a labour to mée. Judged. Affirmed in Error. Croo. 2. 618. Jenk. Century 8. Case 18. Bendl. 139.

Certainty.

Certainty.

A promise to pay mony in Trinity Term, is certain enough, and good. Leonards Rep. pl. 295.

To pay mony, so his Land bee not charged.

If the Father being sick, having two Sons, is making his Will, his two Sons present, and is about to give a Rent out of his Land, the elder Son offered the Father and Brother, that if the Father would forbear to charge the Land with the Rent, that hee would give the Brother so much, and thereupon the Father did not charge the Land; this was adjudged a good consideration and promise. Leonards Rep. pl. 275.

Promise to fat my Hoggs, and re-deliver them.

If I put my Hoggs to another to fatting at Mast, and hée promise mée, in consideration I will give him three shillings four pence for the fatting of every Hogg, that they shall be re-delivered to mee well fatted, &c. this is a good promise. Leonards Rep. pl. 261.

Pleading. Consideration.

If a promise be laid to pay mony owing for goods, in consideration of the goods delivered; this is no good consideration, otherwise it is if it bee for goods sold. Leonards Rep. pl. 222.

Wages for work.
Part 11.

If I agree with one to carry goods for mée, and no wages promised for it, and hee is no common Carrier; that no Action will lye against him, if hée do it not, or do it amisse. 3 H. 6. 36. 2 H. 7. 11.

Taylor.

If one retain mée being a Taylor, to make Clothes for him, and bring mée the Cloth, or put mée to buy the Cloth, and I make his Garment, I

may have this, or an Action of Debt at my choice for the mony. Croo. 2. 626. Debt.

And if hee bring mee Cloth, to make him a Suit of Cloths, and promise mée as much as I shall deserve for the making of it, and for the necessaries thereof, &c. this is good. Noys Rep. 85. And if it bee for an Infant, it is good, for making and petty necessaries, as linings, thred, &c. Noys Rep. 85. Infant.

If a Common Carrier by Boat undertake for good consideration to carry mee from Bristow to London two Buts of Muskedel, and was so careless of them, that one of them did run out. Noys Rep. 114. Carrier.

An Assumpsit is, that if A. a Chirurgion do cure B. of such a disease, hée shall have ten pound, and if hee do not cure him, that then for his pains and endeavour hee shall have five pound; this is a good promise, that will yeeld an Action. Godb. Rep. pl. 490. Physician.

If one contract with mee for good cause, to do work for mee, and hée doth it not; or hee contract with mee to do it in such a manner, and hee doth it after another manner, I may have this Action. 14 H. 6. 18. 3 H. 6. 36. N. B. 145. G. 2 H. 4. 9. 21 H. 7. 41. 20 H. 6. 35. *See* more in chap. 12. To do work.

If I being a Solicitor retained for I. S. do retain an Attorney for him to sue, and I do assume to pay him his Fees, in this case hee may have this Action, or Debt against mee for his Fees at his choice. Adjudged. Hill. 16 Jac. Bradford's Case. 17 Ed. 4. 5. 33 H. 6. 8. But if I retain an Attorney for I. S. and say no more, in this case, it seems he can have neither of these Actions against mee: And yet if I say to him, Bee Attorney for I. S. and if hee pay you not, I will, in this case hee may have this Action. And if I say, Bee his Attorney, and I will pay; by this I am chargeable in both these Actions. 43 Eliz. Simpsons Case. Bulstr. 1. part 16. Promise to an Attorney to pay his fees. Debt.

If a Common Carrier from Bristow to Gloucester by Boat, to whom I have delivered two Buts of Muskadel, assume to transport it for a certain summe of mony; this is a good promise, and if one of them by a long and careless keeping of them, run out; I may have this Action. Noys Rep. 114. Carrier, promise to carry goods safe.

If one owe mee twenty pound, and I buy goods of him to the value of five pound, and it is agreed between us, that hee shall keep up this five pound towards his twenty pound; if I sue for my twenty pound, it seems, this Contract will not barr mee for the five pound. Fitz. Debt. 56. Sed Quære, if an Action of the Case may not bee raised for a breach of this Agreement. And About a Retaining of a Debt, to satisfie another Debt.

If one promise mee, that I shall retain a Rent I owe him for mony, hee is to pay mee; it is said, I may not plead this in a Barre to a Suit for the Rent: But I may perhaps ground an Action upon the promise, if there be a consideration for it. Mich. 9 Jac. B. R. Jarvis's Case.

If one, because I have sold to him so much Wood, assume to pay mee so much mony, and carry away the Wood before such a day; this is good, and Action will lye upon it as there is cause. March. Rep. 100. Promise to pay mony, and take away goods bought.

A. doth assume to B. to deliver to him twenty quarters of Corn every year during their two lives: And that B. shall pay to A. for every quarter four shillings; in this Case B. may have this Action for every failer, and shall recover damages for this time onely, and not (as it seems) for all the time forward. Dyer 113. Croo. 4. 98. To deliver Corn yearly, for life; Damages.

If one that hath a Rent out of Land, promise to another, to relinquish it, and hee, in consideration of this, doth promise to pay thirty pounds; this To relinquish a Rent.

is

Mutual promise. Pleading.

is a good contract. But in alleadging, that he did relinquish the Rent, it is not enough to say so, that he did relinquish the Rent, and did not claim it, but he must shew how; for it may be by words, and then it is no discharge. Croo. 1. last publisht 392.

About a wager or lay.

If two lay money on a wager, and put it into a third mans hand; he that wins it, shall have it; and the lower, hath no remedy for his money again. Agreed at Sarum Assises 9. Car. 1

Promise to allow for Planting.

If I promise to my Tenant, or to a Parishioner (being a Parson) that in consideration, he will plant his Land with Hopps, and so make it the better; or (in the Parsons Case) make the Tithe the better, I promise to allow him two shillings, towards every Acre so planted; this promise seems not to be good. Winch. 80.

To appear in Court.

If one in consideration, that I will be bound for his appearance, he being arrested on a Recognisance; promise mée to appear at the day, and do not, I may have this Action for this; and it will not excuse him, that a Certiorare came to remove the Record, for I must appear, notwithstanding. Adjudged. Trin. 9. Jac. B. R. Roll's Case.

To deliver mee my own Dogg.

If one have a Dogg of mine, and assume to deliver him to mée, on request and do not, I may have this Action; for a Dogg, is not feræ naturæ. Owens Rep 95.

To make a Release to mee for a Release made by mee.

If one, for good cause promise that he, or another, shall make mée a Release of all his right to such Lands, or of all Actions, &c. this is a good promise to give an Action. 14. H. 6. 18.

If one promise mée, that in consideration, that I will accept twelve pounds ten shillings, of him in discharge of all Accounts, between mée and his Brother, and seal a general release to the use of his Brother; that his Brother, shall seal the like general Release to my use; this is a good promise, and good consideration, being pursued and performed by the paiment of the mony, and the making of a good Release. Croo. 2. 13.

To suffer a mans Land to descend.

If one in consideration, that his Son will pay him such a debt, promise him, that his Land shall descend to him; this is a good consideration and promise. Bulstr. 2. part 18, 19.

To assure Land to mee.

If one upon good consideration, promise to make mée a good assurance of such a peece of Land; this Action lyeth, if he doth it not, and this is the most proper remedy, and not to flye into Chancery. Bulstr. 1. part 112, 113.

To assure Land.

If one in consideration, of twenty pound paid, promise to assure mée such Land, by such reasonable assurance, as by mée shall be desired and required, this is good, and Action may lye upon it. But then, I must be sure to have a reasonable assurance drawn, and tendred to him, and therefore it may not be a feoffment without covenants, or the like. Croo. 4. 571.

That a man shall enjoy Land. Part. 12.

If on for a good cause promise mée, I shall enjoy such Lands in possession, and that he will save mée harmeless, concerning any Action, and suit against mée for them; this is a good promise; and if a judgement be had against mée for them, in an Ejectione Firmæ and for damages and costs, I may have this Action; albeit no Execution be upon he judgement. Croo. 1. 254, 255.

To pay mee the Rent reserved on a Lease.

If one in consideration, that I will demise Land, promise to pay mée the Rent, &c. for the time, at the daies, after I make a Lease accordingly, and had not paid his Rent; it seems, this is a good contract, on which an Action may lye. But if it had been an implyed promise, upon sale of goods, &c. the Action will not lye. Croo. 1. 299.

If

If one in consideration of an hundred and thirty pound paid and secured to be paid by mée, bargain and sell all the Furzes growing on such a pacell of Land, to be taken before Michaelmas next, and I in consideration hereof, assume to him, that I will peacably permit him to enjoy the same Furzes, and quietly to carry them away without disturbance; this is a good contract, on which Action may arise on either side. Croo. 1. 357. That he shall quietly enjoy furzes sold.

If one in consideration, that I do occupy his Land, and have paid him his Rent for such a time, assume to save mée harmlesse for my occupation past and to come; this is good, and for any molestation before; if I be after troubled, I may have this Action. Croo. 1. last publisht 94. To save mee harmelesse, for my occupation of his Land.

If I suffer a man to occupy a ware-house in London, and the Tenant doth assume to pay to mée for every week he enjoys it eight shillings; this is a good promise, and this Action may lye upon it; for it is no Lease at will, or otherwise, nor Rent; for if so this Action will not lye for it, but an Action of debt. Croo. 2. 598. To pay mee Rent for a house whiles he hath it.

If two in consideration, of sixpence, given by the one to the other, assume each of them, the one to the other, to stand to the award of I. S. for all matters and controversies betwéen them, so as the award be made before the last of September following; this is a good consideration and promise on each side, and upon it an Action may lye, for the one against the other. Croo. 1. last publisht 861. For Assumpsits expresse, to stand to an Award, See Croo. 1. part last publisht. 343. 344. 432. 861. 904. Croo. 2. 315. 30 Eliz. Moore and Beedle's Case. put in Osborns Case. Coo. 10. 138. Jenk. Century 8. Case 67. Yelverton 35. March. Rep. 108. To stand to an Award.

If a difference betwéen two be referred to a friend to compound, and he order one of them, to enter into a Bond, to pay so much money to the other, and afterwards, he doth promise to do it; this may perhaps be a good consideration. Hetley's Rep. 126.

If a controversy be, betwéen mée and another, about Land; and wee agrée, to refer it to A. B. and each of us do promise to the other, that if A. B. shall judge the Copy, (in question betwéen us) good, to make good his Title, that then I shall suffer him to enjoy the Land without trouble, and if he shall judge it not good, to maintain his Title, that then he shall deliver up the Land to mée without [illegible]; this is a good consideration and Assumpsit, if pursued. Leonard Rep. pl. 137.

If one upon good consideration, promise to become bound to another, by his Obligation, to do an Act; and if he do not become bound; this Action will lye against him. And the Plaintiff is not bound to tender him an Obligation, but the Defendant hath tak it upon himself to do it. Brownl. and Goldsb. 10. To enter into an Obligation. How it must be performed.

If one promise, (for a good cause) to pay mée eighty four pounds, out of the fraught of a Ship; this may bee a good promise. But then I must, in my suit upon it, make it appear; what fraught he is due for the Ship, out of which the money is to be paid; and I lieadge a demand of it. Brides Rep. 220. Averment. Demand. To pay mee money out of the fraught of a Ship.

If one for twelve pence consideration, assume to him that gives it, that if he can prove, that such a one did cut a Tree upon the Land of A. B. that he will pay him ten pounds; this it seems is good. Winch. 101. Upon proof to pay money.

If one in consideration that I will pay two and fifty pound fourteen shillings to his use such a day, &c. to one Playford, to whom he oweth so much, promise to deliver mée my Bond, in which I am bound for the money To deliver up a Bond when the mony is paid.

mony to him when hee shall be thereunto requested; this is good: But a special request must be, and be pleaded in the Case. Popham Rep. 160.

To save mee harmless for an undertaking.

If one, in consideration that I by my undertaking will get a discharge of a debt my Father doth owe to A. B. that hee will save mee harmlesse, and I undertake the debt to A. B. and discharge my Father, and after I am sued for it; I may have Action upon this promise for my relief. Leonard. Rep. pl. 141.

Promise to pay what I shall lay out in a business.

If I be about another mans businesse, and hee speaking of it, say to mee, Do it, and Ile repay you whatever you lay out; this is good: And if I sue upon it, I must shew what I have laid out, and about what I have laid it out. Herley's Rep. 122.

To pay mony. Part 13.

If one be indebted to mee, a Brewer, for Beer, and dye; and his Administrator, in consideration that I will deliver to him six Barrels of Beer, assume to pay mee that the Intestate did owe mee, and this also, and I do so; I may have this Action for both, and have one judgement and execution de bonis propriis. Croo. 1. last publisht. 406.

If one, in consideration that I will deliver to A. B. his Son, such wares as hee shall desire, promise to pay mee for them; this is a good promise, and if I deliver to him, and hee accept of mee wares, albeit I shew not a special desire of them; I may have this Action upon the promise. Stiles 163.

If one, in consideration that I will assure him such Land as Counsel shall advise, promise to pay thirty pound, (viz.) five shillings in hand, nine pound fifteen shillings at Midsummer, ten pound at Michaelmas, twenty pound at Christmas; this is a good consideration and promise. Bendloes 158.

Husband and Wife.

Consideration valuable to deliver mony.

One declared, that in consideration that his wife, dum sola fuit, &c. 1 June. 43 Eliz. at the Defendant's request lent him thirty pound, to be paid to her upon request, that the Defendant did assume to pay it to the wife upon request; this was adjudged a good promise and consideration: But if I shall deliver to I. S. a bag sealed with mony, and in consideration thereof, hee promise to re-deliver it to mee upon request; this Action will not lye upon this; for I. S. can make no benefit by this, as hee may of mony at large delivered to him. Yelverton. Rep. 50.

Promise of mony to do a businesse.

If I have a Cap. utlegatum against another, and I promise I. S. that if hee will go to the Sh[illegible], and procure a special Warrant, and arrest the Defendant, that I [illegible] give him forty shillings; it is said this Assumpsit is void by Stat. 43 H. 6. Noys Rep. 77.

Insimul computaverunt.

If the Husband of M. and I. upon an Insimul computaverunt between him and mee, be indebted to mee a hundred pound, which hee promiseth to pay, and dyeth, and M. his wife fearing I will sue her for this, comes to mee, and requests mee to forbear till Michaelmas, and in consideration of that, promiseth to pay mee; this, it seems, is good enough, and Action may lye upon it. Noys Rep. 81.

Forbearance.

To pay mony for wares delivered.

Taylor.

If one promise mee, that I if will deliver certain wares to his Daughter, that hee will pay for them; this is a good promise, and it shall be intended, that hee will pay mee for them. Noys Rep. 83.

If one put Cloth to mee, a Taylor, to make him Clothes, and promiseth to mee as much as I shall deserve for the making of them; this is good. Noys Rep. 85.

Promise to pay upon forbearance.

If A. recover fifty pound of M. and then B. promiseth, that if A. will forbear Execution of it, that hee will pay to him fifty pound at Midsummer next, or a hundred pound after, if it be not paid then, &c. when it shall be reasonably requested; this is good, but in a Suit upon this promise the

request

request must be expressly averred. Noys Rep. 95.

If one, in consideration, I will let him enter into, and enjoy my house, assume that hee will pay mee thirty shillings a year, during the time hee shall enjoy it; this is good, but it will be doubtful, whether hee may divide his Action for the Rent, or must not bring one entire Action. Hedeys Rep. 53. Promise to pay Rent for a House.

If there be a question between mee and another about a Rent, I do challenge, and I threaten to sue him for it; and hee assume and promise, that if I will forbear the suing of him for it till such a time, and then shall make it appear to his Brothers, that it is, and how it is due, &c. that hee will pay it; this is a good consideration and promise, and being pursued, may raise an Action for the breach of it. Bulstr. 3. 321. Promise upon forbearance of a Rent, and proof that it is due, to pay it.

H. in consideration of a hundred pound, doth assume to K. that the Lady Weston and her Son shall sell to K. such Lands, provided that K. such a day certain, pay to the Lady and her Son two thousand pound, at which time the Lady and her Son shall be ready to assure and convey to K. the said Lands; and for want of payment of the said two thousand pound at the said day, that K. shall lose the said hundred pound, and the Contract for the Land shall be void; this agreement is good: But if K. be not ready with his two thousand pound, the Lady is not bound to assure, nor can K. have any Action against her, as if hee be ready with the money, and pay or tender it. Godb. Rep. pl. 337. Trin. 21. Jac. Killigrews Case. *See* Croo. 1 part last publisht. 337. To make an Estate. How taken.

Sect. 8.

By way of Bargain and Sale; and what shall be said such a Bargain and Sale, with, or without a Warranty, on which this Action may bee grounded, or not.

This Action will lye in some cases upon a Contract of buying and selling, the which is sometimes with, and sometimes without a Warranty: And this (in this Case) doth sometime respect the property of the thing sold, and sometimes the quality of it: And Warranty is the cause of an Action, in case of vendition as well as of corruption. 19 H. 6. 9. So that if one sell mee any living, or dead thing, and warrant it sound and right, and if it bee not so, I may have this Action. Kelw. 89. 9 H. 7. 22. F. N. B. 94. 98. The Warranty must be made by the man that sells, and not by a stranger, and upon a sale by the owner, and not by a Servant; otherwise it is not binding. 11 Ed. 4. 6. And whether the price be paid or not, is not material in this case, for debt lyes for it. 9 H. 7. 21. pl. 2. 5 *H.* 7. 41. With a Warranty. Part 1. Debt.

If one sell a horse to mee, lame, or diseased in his leggs, or eyes, and know it, and warrant him to mee sound, I may have this Action against him. T. 7 Ric. 2. Ley 42. 31 H. 6. 11. So if one sell mee a horse sick, and warrant him sound, and know it to be otherwise. N. B. 94. C. 7 R. 2. 42 Regist. Orig. 108. Lib. Intr. 9. 8. sect. 1. But if it bee such a fault as the seller doth not know of, some say the Action will not lye. F. N. B. 94. But it seems the Law is otherwise, and alike in both Cases. But if a man sell mee a horse, or other thing, and warrant it to be otherwise than it may appear to him that hath his five senses; as a horse to be sound and he is strained or hath a Splint, Spavie, Boyl, or is lame, or warrant Clothes to be red, and they be blew; no Action will lye upon this Warranty. 13 H. 4. 2. 7 H. 4. 14. 5 H. 7. 41. 20 *H.* 6. 37. 31 H. 6. Horse.

11. And yet, see Croo. 2. 631. where it seems to be held, that in case of a Warranty made at the time of the sale, an Action will lye, Ideo Quære. If hee warrant him to mee sound mind, and limb, and he hath some secret disease known to the seller, not visible to the buyer, as if hee be shoulder-shot, or the like; I may have this Action against him Adjudged. Trin. 18 Jac. B. R. 11 Ed. 4. 6. 13 H. 4. 1. But if the Warranty extend to a thing to come, as that a hearse shall carry a man thirty miles a day, or the like: this, it seems, is not binding. Finches Ley 188.

Cloth. If a man sell mee Cloths, and warrant every one of them to be of such a length, and they be not so; it is said, I may have this Action for this. But if the Warranty be for such a colour to a buyer that hath his eyes, and they be not of that colour, this is not actionable. 11 Ed. 4. 6, 7. Deceit. 23. 14 H. 6. 22. Action upon, &c. 9. And there it was said, if a stranger shall warrant a thing sold mee, that this is void: So if my Servant, that shall sell my goods, warrant it; no Action will lye against him for this. And yet perhaps some other Action may lye against him. 11 Ed. 4. 6. So if one warrant Cloth sold to mee, that it is well fulled, when it is raw, 21 H. 6. 221.

Master, Servant.

Warranty to, or by a Servant. But if a thing be sold to mee, that am absent from it at the sale, and the Seller warrant it, I may have advantage of this, albeit it be about such a thing as I might have discovered, if I had been present. 14 H. 6. 22. Action, &c. 9. If the Servant sell by Covin of the Master, and the Master agree to the Warranty, he may perhaps be chargeable with it. 9 H. 6. 53. pl. 37. 11 Ed. 4. 2. Old N. B. 50. F. N. B. 94. 98. 5 H. 7. 41. 9 H. 7. 22. Kelw. 89. If my Servant sell my Horse, or other Goods, and hee warrant it, and it hath a secret fault, the buyer can have no Action against mee upon this Warranty; for the Master cannot bee bound by any Act of the Servant, but by such as hee doth agree unto. Doct. and Stud. 138. 9 H. 6. 53. Bridgman's Rep. 128.

Buyer absent at the time of the bargain.

Corn or Grain. If one sell mee Corn, or Grain, and warrant it good, and it is not so, I may have this Action. Lib. Intr. 9. B. Regist. Orig. 111. A. See Noy's Rep. 124.

If one sell mee Sheep, and warrant and promise them to be sound, and to bee well worth nine pound a score, and if they be not of such a value, that hee will make them worth nine pound a score to mee in ready money; this is a good promise, and if they bee not sound, or not worth so much, I may have this Action against him upon it. Yelverton. 114.

Wood. If a man sell mee Wood, and shew mee a part of it, and warrant the rest of it to bee as good as that; if it be not so, I may have this Action. 14 H. 6. 22. pl. 66. Action, &c. 9.

Saphire. If one sells mee a Saphire for a Diamond, and warrant it to bee a Diamond, and it bee not so, I may have this Action against him upon this Warranty. Kitch. 174. Survey of the Law. 106.

Part 2. A Warranty of a thing that is out of a mans power, as that seed shall grow, or the like, is void, and no Action will lye upon it: But to say that it came out of such a Garden, or out of such a Garden or Country, is good, and may be Actionable, if not true. 11 Ed. 4. 6, 7. Deceipt 23. But if I warrant Sheep I have sold, that they shall bee sound for a year; this is good, and an Action may lye upon it: So a warranty that such a Ship shall return safe to Bruges. Owen's Rep. 60.

Warranty after the Contract. If the sale be at one time, and the warranty afterwards at another time, or place, albeit it be by the same person, yet it is held to be void, and that no Action will lye upon it. 5 H. 7. 41. But if it be by writing sealed, &c. hee may have an Action of Covenant upon it. 9 H. 6. 53. 14 H. 6. 24. 11 Ed. 4. 8.

Covenant.

A Warranty therefore upon a Sale that shall binde, must be made at the time of the sale of the thing. Stiles Regist. 344. 15 H. 7. 41. N. B. 98. L. And not afterwards. Dyer 75. 5 H. 7 41. 11 Ed. 4. 6. Pasche 3. Jac. B. R. Goldsmith's Case. Bridgman's Rep. 126. Croo. 2. part 4. 29 Ed. 3. 25, 26.

If a man sell mee corrupt wine, or victuals, for good, and warrant it good, and it bee not so; I may have this Action. And so some say for this, where there is no Warranty. Dyer 75. 9 H. 6. 53. Action. &c. 5. 7 H. 4. 15. Fitz. fol. 94. And so it seems clear of dead meat. Action, &c. 27. And yet it is said, that if the Vendee shall taste it, and accept it for good, no Action will lye for it. H. Action upon the Case. 48. 15. And yet if the Seller undertake it shall endure good until, &c. and it doth not so; hee may have Action for this. P. 7 H. 4. 15. Action, &c. 27. Victuals.

If one sell mee twenty Sheep to kill, and they be corrupt, I may not have this Action for the deceipt, without a Warranty: But if hee sell dead Mutton corrupt, I may have it, for by the Law no man may sell corrupt Victuals by the Statute. F. N. B. 98. K. 5 H. 7. 41. 11 Ed. 4. 6. Deceipt. 23. So of corrupt Wine. 7 H. 4. 15. Action upon the Case. 27. See after.

If one sell mee Herrings, and warrant them good, and they are naughty, this Action lyeth. Regist. 96. A. Herrings.

If a Physician, or Chirurgion, Farrier, or Smith, warrant a Cure, for good consideration, and doth what hee can, or ought to do for the Cure, and doth it not; it seems, this Action will lye upon this. 48 Ed. 3. 6. For if a Chirurgion for a man, or a Farrier for a horse do warrant or promise a Cure, and do not cure, although hee be not negligent; this Action will lye against him: And if hee undertake the Cure, without warranty, and be negligent, an Action of the Case lyeth. Plow. 305. Doct. and Stud. 105. 17 Ed. 4. 25. Physician, or Chirurgion, Farrier or Smith. Cure.

If one sell mee, for good consideration, twenty quarters of Corn, or Malt, and after condert the same to his own use, after I have demanded it, and hee hath denyed it, it seems, I may have either this Action, or an Action of Detinue at my Election. 20 H. 7. 9. Without a warranty. About a sale of goods, &c.

This Action will lye for money upon the sale of any personal things. 33 H. 8. Broo. Action of the Case. 105. 110. 2 R. 3. 14. Com. 172. For in every Contract there is an Assumpsit implied. Coo. 4. 94. And hee need say no more in his Count, but sæpius Requisitus. Pasche 28 Eliz. Co. B. Nor hath hee need to say, that hee was ready, in de bonis propris. Trin. 7 Jac. B. R. Fitz. William and Blackman. Implicit. Assumpsit. Count. Request.

It will lye against a Purveyor or Servant that buyes goods for his Master, and promises payment for it. Dyer 236. 12 H. 8. 12. Servant. Part 3.

So against him that shall promise to mee, a Baker, to pay so much as hee shall deliver in Bread to B. 29 H. 8. 2.

So upon a promise to pay for Cloth bought of mee by B. if B. doth not pay for it. 12 H. 8. 12. To pay for Cloth.

If I sell to B. two weights of Barley, for as much as I have sold to others; in this Case the contract is good: But in my Action upon it, I must shew for what I sold to others; and I must give notice thereof to the Defendant. Count. Notice.

If one sell mee Corn, and promise to deliver it mee at a day, and I pay, or promise the mony for it, or I give earnest, or pay part of the mony, and hee doth not deliver it at the day, I may have this Action. 26 H. 7. 9. Dyer 22. 113. Coo. 4. 94. So if hee promise to deliver mee good, and Merchantable Corn, and doth not. Dyer 75. 8 Ed. 2. 6. For not delivery of goods sold.

If one buy any thing of mee, and do not take it away in convenient time, but suffer it to lye upon mee, to hurt mee, I may have this Action against him, B. 13 H. 4. Action of the Case. 48.

Deceit. Sale of anothers goods to mee. Deceit. Count.

If one sell mee another mans goods for his own, knowing them to be none of his own, I may have this Action, otherwise it is if he do not know it. Croo. 1. last publisht. 44. And therefore, if one take away anothers Horse, and sell him to mee as his own, and after, it is taken from him upon an Execution for the owners Debt; I may have this Action against the seller. 42. Ass. pl. 8. Action, &c. 42. The declaration therefore in this case must say, Sciens, that they were the goods of a stranger, or it is not good. Croo. 1. last publisht. 44. Croo. 2. part 196, 197. See Deceit. chap. 6.

Wares.

If one, upon a Contract of sale, promise to deliver mee good Gum, and deliver mee bad; or sell mee good Wax, and deliver mee bad; I may have this Action. So for other things, in like case. Mich. 7. Jac. B. R. Weston and Deighton. Survey of the Law. 107. Dyer. 75.

Victuals.

If one sell mee corrupt victuals, Bread, Beer, Apothecaries Drugs, Raisons, or other thing for Food, or Physick, and know it to be corrupt and unwholesome; I may have this Action for the damage done to the health of my body. 19 H. 6. 53. 22 H. 7. 91. 1 Ed. 4. 6. Kelw. 91. 11 Ed. 4. 6. Croo. 2. part 196, 197.

So if one shall sell mee Wine mixed with Water. N. B. 88. F. And yet if the buyer, or his servant, shall see and taste the Victuals, or the Wine, and like and accept it; in this case hee cannot have this Action for the Deceit. 7 H. 4. 16. 13 H. 4. 2. But for false and sophisticated Wares, or Merchandizes sold, no Action (as it seems) will lye, unlesse there be a warranty in the case. Dyer. 75. 76. And yet see Kelw. 89. 7 H. 4. 10. 13 H. 4. 2. 9 H. 6. 52. 11 H. 6. 12. 19 H. 6. 49. F. N. B. 88.

A Horse. Deceit. Cloth.

If one sell a horse that is not sound to mee, and know it be unsound, albeit he do not warrant him sound; yet I may have this Action. Coo. 4. 18. 42. Ass. 8. So if one sell mee naughty Cloth for good, knowing it to be naught. 21 H. 7. 91. See before. But if one sell mee a horse which is unsound without any warranty, and I know him to be unsound; I can have no Action upon this sale. F. N. B. 94. 31 H. 6. Stathum. Action, &c. pl. ult. 7 R. 2. Monstrame de Fait. 160.

Grain.

So if one sell mee Corn, or Grain, and warrant it to be good, and it is not. Lib. Intra. 9. B. Result. Orig. 111. A.

Deceit.

If one sell mee Land, Goods, or Cattle, for his own, that are none of his own, and the thing is afterwards taken from mee, or I be molested about it by the right owner; I may have this Action. Coo. 4. 18. 42. Ass. 8. Broo. Action, &c. 85. Fitz. 4.

If one sell mee Land, and agree to make mee an Estate of it before a day; and this is upon good consideration, and hee perform it not; I may have this Action.

Sect. 9.

How such a Contract shall bee taken; and where it shall be said to bee performed, or broken, or not.

Part 1.

For the opening of the Answer to this Question, take these things. 1. That every Contract is ruled much by Equity, and the Law doth much here what is according to equity therein.

2. That

2. That the intent of the parties to the Contract doth much rule therein, and is more heeded in Law than the form of words. And therefore if they agree upon a thing, and the words spoken or written to declare their agreement, be not apt and proper, yet if their minds can be gathered by it, it may be good enough. And the words to finde out their minds therein shall be taken according to the common acceptance of such words in the time and place where they are spoken.

3. That a thing incertain therein, for time, place, or otherwise, may be made certain by a necessary coherence, and relation to other things. Popham. 182.

4. That in case of a doubtful and incertain Contract, wherein there is a sale, the words shall be taken most in favour of the buyer, and most against the seller.

5. That the whole Contract may be considered together, and as an entire Agreement: Or in the parts thereof, as it doth consist of an Inducement, Cause, or Consideration, and of a Promise by Assumpsit; And therefore as each part thereof is to help to shew the meaning of another part thereof; so it is to be considered as the Consideration of a Promise, and the Promise it self: And in both, the intent and meaning of the parties is to be pursued, and performed, not in the Letter, but in the substance of it. Yelverton. 87.

But for the further opening hereof, take (for the present) these following Cases.

If one, in consideration that I will procure him the Loan of ten pounds for an entire year, assume to make mée a Lease of such a House for three years; this is good: But it will not be sufficient to set forth I did procure him the money, some at one time, and some at another; and yet if it be of several persons; or part at one time, and part at another time, so it be all in one day, that hée hath it a full year, it is good enough; the consideration must be performed in the substance, as well as in the letter of it: So if it be to be paid in gold, payment in silver is not a performance, nor will the acceptance of it by the other amend the matter. Yelverton. 87. Consideration pursued.

If one have seventeen Tods of Wool by him, to sell, and I bargain for fifteen tods of it at my choice, and hee, in consideration of fy pounds to be paid by mée such a day, promise to deliver it mée such a day; this is good: But if I sue upon it, I must shew that I have chosen out my fifteen out of the seventeen tods, for this is a condition precedent: And yet if hee sell any of it before my choice made, this will make the promise absolute, and will be a breach of it; so if hee deny mée to see it, and make my choice of it. Yelverton. 76.

But for a further clearing hereof, see the consideration part. See before divers Cases in this chap. sect. 6. part 5. 10, 13, 27, 28, 29, 30, 31, 32. sect. 7. part 3, 4, 5. 10.

If a Contract be for sale of tons, pounds, bushels, yards, or ells, of anything, it shall be accounted, measured, and reckoned, according to the custome of the place, and not according to the Statutes. Kelw. 87. 17 H. 8. 14. Plow. 41, 440. Contracts about todds, pounds, &c.

If an Agreement be in Lincolnshire for eight strikes of Corn, this shall be taken for a bushel of Corn, for eight strikes there make a bushel. Bulstr. 1. part 135. If a Contract be to give for a thing twenty French Crowns, this shall be taken for fy pounds. Rep. 1. 141. About strikes of Corn.

If one agree for the buying of any thing at the price of twenty pieces, it shall be taken for twenty pieces of gold, of five and twenty shillings a piece, Twenty pieces.

Silver Salt.

peece, for this is the common intendment of the word. So a Silver Salt may be taken for a Salt-seller. French Peeces shall be taken for French Crowns known here, Croo. 1. 141.

Cup of Wine.

If one promise to give mee a cup of Wine if I come to his house, if I do so, I must have but Wine in a Cup, and not the Cup also. Bulstr. 1. part 175. 27 H. 8 27. Plow. 86.

Twenty barrels of Ale.

If a Contract be for twenty Barrels of Ale, or ten Pottles, or Cups of Wine, the Buyer shall not have the Barrels in the first Case, nor the Pottles or Cups in the next Case: But if the bargain be for Hogheads, or Firkins of Wine; in these Cases hee shall have the Hogheads, and Firkins also, Plow. 86. 17 H. 8. 27. Broo. Contract. 4. Bulstr. 1. part 175.

Hogheads or Firkins of Wine.

And if one promise to do a thing, as make a Feoffment, surrender, or the like; the meaning is, that a good and legal Feoffment, surrender, &c. be made, Dyer. 23, 24. 75.

To make an Estate in meat a good Estate.

So if it be to deliver Wares, it must be good, not false and sophisticated Wares, or else it is not said to be performed. And for this, if one promise to make a Feoffment by a day, and before the day hee enfeoffe another, or grant a Rent Charge out of it, and then make the Feoffment at the day; this is no good performance of the Promise. Old B. of Entries. fol. 7. 3 H. 7. 14. Fitz. 8. B.

To deliver wares, shall bee taken true wares.

If one for good cause promise to make good a house; this shall be taken to repair it.

Make good a House.

And if one owe mee twenty pound, and I say, I will sue him, and I. S. prayeth mee to forbear till Michaelmas, and hee will make it good to mee; this shall be taken, that hee will pay it to mee. Mich. 21 Jac. B.R. Keyts Case.

Election Make good Mony.

If one promise to do one of two things by a day, till the day be past, he that made the promise shall have Election: but after the day is past, he to whom the promise is made, shall have the Election. 9 Ed. 4. 39. Coo. 9. 94.

Promise to do one of two things.

If it be a part of a promise to give a Bond with Sureties, and say not what Sureties, nor in what summe, the Court must judge what Sureties, and in what summe. Hobb. Rep. pl. 79.

To give a bond with Sureties, and say not what Sureties. Part 2.

If one be indebted to another, and hee do promise this debt at a day to come; in this case the party to whom the promise is made, cannot bring his Action for the debt upon the first cause, till the day be past, by two Judges. B.R. Stiles Regist. 31.

If the promise be to pay mony, and no time set, it shall be paid presentsently. If to make a Lease for years, and no time set when it shall begin, it shall begin presently. Coo. 10. 76. 102.

To pay mony, no time set.

But if one promise to deliver mee goods, or to make a Lease, or the like thing, and no time is set for the doing thereof; hee shall have all his life time to do it, unlesse I hasten it by request. Coo. 6. 33. Coo. 10. 77.

To deliver goods, no time set.

If a promise be to make a Lease for years indefinitely, and say not when to begin, it shall begin presently. Coo. 10. 33.

To, make a Lease for years, and say not what Lease.

If I retain a Servant generally, and not say for what time; the Law will construe it to be for one year, according to the Statute. 23 Ed. 3. chap. 1.

Retain a Servant, say not for what time.

If a promise be to provide wedding Apparel for a woman; this shall be taken for wedding Apparel to be used the wedding day, and time of Feasting, which commonly is some days after, according to the dignity of the person. Croo. 1. 38.

To give wedding Apparel.

If a promise bee to make sure a portion of six hundred pound; this will bee understood that hee doth undertake hee shall be worth to him six hundred pound. Croo. 146. 147.

To make sure a portion of six hundred pound.

If

If one promise to me, to make me such an estate of Land, as my Councel shall advise, I must, and may take the notice from my Councel, and make it known to him that makes the promise what it is; and if I do mis-report it, yet if he do that which he reports it to be, he is discharged. Croo. 1. part last publisht. 298. 299. — To assure Land as Councel shall advise. Notice.

If one bargain and sell his Land by Deed indented, and the Tree upon it, and the Deed is not indented, so that the Land passeth not, the Trees will not passe neither. Coo. 11. 48. — Bargain of Trees, how it shall be construed.

If one sell all his Trees in such a Town, and it is agreed that the Vendee shall not cut them till Michaelmas, and in the mean time Hawks do breed in the Wood, it seems the Vendor, and not the Vendee, shall have the Hawks. 27. Ass. 29. See Coo. 11. 54. — Hawks.

If one assume to me, to make me such an assurance of Land, as my Councel shall advise, and I advise it my self, and require it, he is bound to do it as he requires. Croo. 1. last publisht. 466. — To assure as Councel shall advise.

If one make a Lease of Land for a year, excepting the Trees, and Hawks breed in the Trees upon the Land, the Lessor, and not the Lessee shall have the Hawks. 14 H. 8. 1. Kitch. 564. — Hawks.

A promise to forbear a debt till such a day, shall be taken for to forbear to sue for it. Croo. 1. last publisht. 477. — To forbear a Debt.

If a promise be in consideration of a Lease made, and say not what Lease, it may be any Lease, for life, years, or at will, and therefore not a good consideration alone. Croo. 1. last publisht. 566. — A Lease, and say not what Lease.

If the Lessor assume to the Lessee for good consideration, that he shall hold the Land without the let of any person whatsoever, this shall be taken, let by one that hath, or that hath not Title. Dyer. 318. Mich. 7 Jac. B. R. Gambles Case. — To hold Land without any interruption.

A Consideration that the Creditor will give the Debtor day of payment of a former debt for one year, is a good consideration, and it shall be taken in the common sense, for the deferring of the day of payment. Croo. 1. last publisht. 643. 644. — To give day of payment of mony.

If a promise be to enter into a bond to pay mony, and no summe expest, the summe shall be twice as much as the mony to be paid. Croo. 1. 115. So if it be for another thing, it shall be a reasonable summe. Croo. 2. 652. — To enter into bond, not saying in what summe, to pay mony.

If my Tenant at will of my house, promise for good cause to save me harmlesse, and indemnified from all losse and harm by reason of his Inhabitation in the house, and the house is burnt by the neglect of his Servant: this is a breach of his promise. Coventries Case. — To save harmlesse. Part 3.

If I promise to I. S. that his goods shall come safe to Dale, and they be arrested by the way; this is a breach of promise, and Actionable. Coo. 6. 47. — That goods shall come safe to Dale.

If one be indebted to me in mony for divers causes, assume to pay the same to me before the beginning of my next Journey to London; if I sue for this, and set forth a journey, I must averre it to be my next journey to London. Yelverton. 175. 176. — Averment.

If one be bound to do a thing by Law, the which he hath also undertaken by his promise to do, if by Law he be now discharged, perhaps he may not be bound by his promise. Yelverton. 207. — Discharge of an Assumpsit.

If one for good cause promise me five pound, or a Gown such a day, he that is to pay hath the election till the day, but after the day, he to whom it is to be paid, shall have the election. 9 Ed. 4. 39. Fitz. Debt. 89. — Election.

If one promise another, he shall use my Land for five years, and he, in consideration thereof, promise to pay him twenty pounds for every year at two — Mony to be paid at several dates.

two Feasts; here several Actions will lye at every day; but if the promise be, hee shall enjoy the Land for five years, and for this shall pay him a hundred pound in five years, viz. twenty pound per Annum; there no Action will lye till all the time be past. Croo. 1. last publisht. 118. Owens Rep. 42.

If one, for good cause, promise to deliver to mee twenty Quarters of Barley every year during my life, if he fail once, I may have this Action, and so upon every failer. But herein it will be wisdome in the Plaintiff, to declare, and to lay down his damages for all the times for happily hee may not have the advantage of a new Action. Croo. 505. Yelverton 66, 67. But in these things it seems the Law was otherwise taken heretofore. See Bendl. 3. 158. Croo. 3. 22.

So if a summe of money be given in marriage to be paid at several daies, and here upon one failer, perhaps hee may have damage for all. Dyer. 113. Broo. Action, &c. 108.

Debt. If one promise to pay money at several daies, or yearly, or quarterly, no Action of debt will lye, till all the daies be past. But this Action of the case will lye after the first day. Croo. 1. part last publisht. 776. 807. Croo. 2. 504. Coo. 10. 128. 11 H. 6. 18. Bulstr. 1. part 155. 2. part 136. Coo. 4. 94. Dyer. 113. Broo. sect. 1. Croo. 1. 275. 492.

Deceit. If one be indebted to mee two hundred pound, and delivereth to mee two hundred pounds worth of goods to sell, and pay my debt, and I am proffered two hundred pound for them, and I refuse it, and afterwards sell them for a hundred pound; in this Case hee hath no remedy, but must pay mee the residue of the money: And yet if there be any fraud between mee and the buyer, perhaps hee may have relief in Equity. 18 Ed. 4, 5.

Equity.

About Trees. If one contract with mee for all the Trees in his Woods; by this I have a power to cut them down, and carry them away thorow his grounds, where they grow; and this, it seems, I may do, when I will. But if one sell mee all his Fish in his Pond, I may not now upon this Contract dig a Trench, and let out the Water to take them. But I may take them by Nets, or other Engines as I can: Or if that be not to be done, then may I take them by some other means. So if a Lessor sell his ground, excepting the Trees, hee may now go upon the ground with one that would buy the Trees, to sell them to him, and after they be bought, the buyer may go upon the ground with his Carts, and take them away. Coo. 11. 52. Plow. 15, 16.

About Fish.

Delivery of goods sold. If I sell my horse to A. B. for twenty shillings, which hee hath paid to mee, and I refuse to deliver him the horse, hee may have this Action against mee, but not till hee hath paid the twenty shillings

To do a work, and say not when. If one assume to demise a Parsonage to another, and say not when, he must do it in a reasonable time, two months hath been adjudged reasonable; But Quære what estate for life, or years. Noys Rep. 65.

If a Contract be made upon good consideration to do a thing, hee that promiseth to do it, shall have a reasonable time to do it, and not have liberty to do it at any time during his life. Hil. 22 Car. 1. B. R.

During the Tearm, how taken. If a promise be that I. S. shall dwell in a house during the Tearm, this shall be taken for the whole Tearm; But if the promise be, that he shall not do such a thing in the house during the Tearm, this shall be taken, that hee shall not do it at any time during the Tearm. Bulstr. 2. part 136.

Part 4.

To build a House. If one promise for ten pound paid him in hand, to build a house; this is conditional, and hee is not bound to do it, till the ten pound be paid. And it

it is not like to this; where one doth promise to build a house, and the other doth promise ten pound, here the promises are reciprocal, and give Actions to each of them, the one against the other. See sect. 6. part 29. Conditional promise. Reciprocal promises.

If it be a part of an Agreement to give a Bond with Sureties, and they say not what Sureties, nor in what summe, the Court must set down how many Sureties, and in what summe. Hobb. Rep. pl. 79. To enter into bond with Sureties.

If one promise to deliver wares, and hee deliver false and sophisticated wares, or promise to make a surrender; this shall be taken for good wares, and a good surrender in Law, and therefore the delivery of false wares is not a performance: So neither of the surrender, that is not good in Law. Dyer. 75. 23, 24. 37 Eliz. B. R. Sleighs Case. So if he promise to make an Estate of Land by Feoffment, Lease, &c. by a day, and hee make it away, or charge it with a Rent, or the like, and then make the Feoffment; this is no performance of the promise. So if one sell mee Trees to be taken before such a day, and hee sell them away to another before the time: Or sell mee a Horse to be taken such a day, and before the day hee sell it to another; this is a breach. Dyer. 22. 21 H. 7. 41. Coo. 10. 130. Kelw. 77. 20 H. 6. 34. F.N.B. 99. K. Book of Entries. 7. Fitz. 8. 3 H. 7. 14. To deliver Wares, it must be good Wares. To make an estate, it must be a good estate.

If A. promise to convey Land to such a one as B. shall name, and hee convey it to B. himself, and hee accept it; this is a good performance Mich. 13 Jac. Co. B. Hulligo and Wild. To convey land to A. and hee doth it to another.

In consideration that one will give credit for my Son, it shall be taken for to engage, or give his word for him. Brownl. and Goldsb. 13, 14. Give credit for I. S.

If one promise, in consideration of a hundred pound, to enfeoffe mee of such a peece of Land upon Request, and after I do request him, and hee refuseth; But before the Action brought, the thing is done, and accepted of by mee; this is a good performance, or at least will be a barre to the Action. Bulstrode 1. part 38, 39. Request. Promise broken, discharged.

If the Lessor upon good consideration, assume that the Lessee shall hold the Land without the let of any person whatsoever; this shall bee taken for a let by one that hath not, as well as for a let by one that hath a Title; and a let by either of them will be a breach, and give Action. Dyer. 328. M. 7 Jac. B. R. Gambles Case. But if the promise be, that hee shall enjoy the Land, and no more; this shall be taken as against himself, and all claiming by or under him onely, and not of strangers. Bulstr. 2. part 94, 95. 26 H. 8. 3. Dyer. 328. 18 Ed. 4. 20. To injoy land without the let of, &c.

If one, for good consideration, promise mee, I shall injoy such Lands according to my Lease, without the interruption, or incumbrance of any person; this is good: But if I sue upon it, I must set forth especially what the incumbrance or interruption is. Coo. 2. 425. 444. To free from Incumbrances.

If one promise to save another harmlesse from any thing, hee that made the promise ought to do it at his peril, without request, and request is not material, although the promise say upon request: And if hee bee damnified by mee, and I do recompence him upon request made, the promise is not broken. Stiles. 141. Request. To save harmlesse.

If one promise mee, in consideration that I will suffer him to occupy my Land for five years, that hee will pay mee at the Feast of All Saints next, and so yearly twenty pound at the feasts of the Annunciation, and All Saints, by equal portions, during the Tearm: in this Case the Action may be brought after any non-payment, and the Obligee shall not bee restrained to sue till all the years be expired. Owens Rep. 42. To pay Rent at several daies. Part 5.

To pay a short time after Easter.

If one promise to pay mony within a short time after Easter; this shall be taken for presently after Easter. Bustr. 1. part 206, 207.

To save harmlesse. House burnt.

If I lease my house to B. at will, and hee, in consideration that I will permit him to enjoy it till such a day, hee promiseth to keep mee harmlesse from all damage, ratione Inhabitationis & occupationis mediagii predicti, and for every farthing hurt, that hee will satisfie two pence upon request, and his Servant suffers the house to be burnt; it seems the Action lyes, although the Master do not dwell there. M. 9 Jac. B. R. Coventry and Woody. Survey of the Law. 86, 87. But in the Declaration hee must averre to how many farthings his losse came, and demand two pence for every farthing in a grosse summe.

Count.

In some Cases before a Contract or Assumpsit can be broken, and an Action brought, there must be a request or demand made by him that is to bring the Action, of him against whom it to be brought: Or a notice to be given to him who is to do the thing, promised to bee done, of something to be done, before the same is to be done. As for example;

Of a Request, or Demand, or Notice, where to be made, or not; and what shall bee said a good Request, or not.

If one promise to deliver goods to mee upon request, I must make an Actual Request of them, ere I can bring any Action upon this promise. 13 Car. 1. B. R. And yet if I deliver Goods to re-deliver to mee upon Request; in this Case, it seems, I may sue for my goods upon request.

Equity. To deliver goods. To deliver a Deed.

If one be arrested for my debt, and hee make an Obligation to mee, for his delivery, to pay the mony at a day to come, but doth not deliver it as his deed, but assumeth that hee will deliver it upon request; in this Case I must request it: And if I make no request till the day of payment bee past, I am remediless in Law, and must sue in Equity for my mony. Pasche 9 Jac. B. R. Bassets Case.

To pay mony on demand.

If I promise upon good consideration to pay ten pound on demand, or say not when it shall be paid; in this Case, it seems, no demand is needful: but if the promise be to do a collateral thing, as to pay ten pound owing by another man, if hee pay it not himself at Michaelmas upon demand; in this case hee must demand it before hee can sue for it. 12 H. 8. 12, 17 Jac. B. R.

To make up a portion, if it be not so much.

If a promise be made, in consideration of a marriage to be had with I. S. that the Defendant, if the womans portion shall not amount to four hundred pound, will make it up so much upon request, the Plaintiff must make a request to make it up; and yet if Non-Assumpsit be pleaded to it, it seems hee need not prove the Request. By Baron Henden at Glouc. Assizes 7 Car. 1.

To pay mony.

If I promise, for good cause, to pay another ten pound; in this case demand of the ten pound is not necessary to be made.

If one promise to pay if hee marry A. S. or when hee returns, &c. upon request; in this case no Action can be brought, till the Marriage, or Return, and the Request made. Croo. 1. 98, 99.

If I have laid out divers summs of mony for another to such a summe, and hee promise to pay it to mee; in this case, if I sue for it, I must alledge a special request, and set down the time and place, for it is not due and payable till request, nor can any Action be brought without it. Croo. 1. last publisht. 73, 74.

If I, in consideration that another promise to marry my Daughter, promise him forty pound upon request; in this case, and all others, where a promise is to do something upon Request, there a Request must bee made, and in pleading, must be alledged to be made. Croo. 1. last publisht. 774. Croo. 2. 183.

Where a time certain is limited for the payment of any thing, he shall never

never alledge a Request before the day, but otherwise it is where it is incertain. Croo. 1. last publisht. 455.

But where a man hath by agreement a power to demand, there generally he may make his demand when he will. Croo. 2. 194, 195.

If one, for good cause, promise to pay me nine pound, which I. S. doth owe me, when the party promising shall be thereunto required; in this case, because it is a strangers debt, and no duty till the promise; there must be a special and expresse Request made, and the time and place of it set down, and licet sæpius requisit, will not serve. Croo. 2. 523. Part 6.

Where-ever I make my promise upon a thing to be done at my request, the Execution of that Act must pursue the Request, and that must be past, ere the promise is to be performed. Hobb. pag. 145.

If I promise mony to the matriage of my Daughter, or Kinswoman; in this case, it seems, no notice needs to be given to me of the marriage, before the Suit brought; and yet if it be penal, it is otherwise: And therefore where the contract is, that if you marry her, and I do not then pay you twenty pound in three weeks, I shall pay forty pound; in this Case notice must be given of the marriage, and demand of the mony: So if I promise a woman, if she will marry my Son, that I will give her the one half of all my Lands, and Goods; in this case notice must be given before a Suit can be begun. Old B. of Entries. fol. 4. New Book of Entries. fol. 2. So if I promise a man twenty pound at his day of marriage, or when he shall marry any woman whatsoever; in this case notice must be given to me that he is married ere I can be sued: But if I promise to one a hundred pound, if he marry A. S. my Couzen, it was adjudged in this Case notice was not necessary, but it shall be intended, that when hee demanded the mony, he gave notice of the marriage. Croo. 2. 228, 229. Notice of a Marriage.

If I am promised by I. S. that if I at his request will take S. M. to wife, he will pay me a hundred pound upon request; in this case I am not bound to give him notice of the marriage, but may sue for my mony without it. Yelverton. 168.

If I promise to one twenty pound, if he marry my Servant, here no notice need to be given to me; And there said to be adjudged. That upon Assumpsit to pay an hundred pound upon the day of marriage, no notice was shewn, and yet held good, and affirmed upon Error brought. Noys Rep. 123. See Brownl. and Goldsb. 10.

If I have ten Quarters of Corn, and I sell one Quarter to I. S. to pay me half a year hence for it, after the rate that I sell the rest; I must sell and give him notice how I sell the rest, before I can sue for this. Hobb. Rep. pl. 56.

If a promise be to I. S. to pay him mony at his first coming to Gloucester; notice must be given to him that is to pay it, when the other doth first come to Gloucester. Hobb. Rep. pl. 63.

If one promise to save me harmlesse concerning any Suit about my Land, and there be a Suit and Recovery against me about it; I must give him notice of the Suit and my damage, and demand it ere I can sue. Croo. 1. 254. 255. Croo. 1. last publisht. 97.

If I promise, for good cause, to pay ten pound to I. S. when he shall purchase White-Acree; in this case he must give me notice of his purchase, ere he can sue me for his ten pound; but if the promise be to pay it, when a stranger shall purchase it, there it seems otherwise; for this is as much in his, as in my knowledge. Coo. 7. 29. Brownl. 1. part 9. 10. 13. 46.

If one, for good cause, promise to save mee harmlesse from such an Engagement, it is said, I am not bound to give him notice of the breach of the promise, before I sue him, nor to set it forth in the Count. Mich. 9 Jac. Somershals Case.

But generally, where the thing to be done lyeth as much in the knowledge of him to whom the promise is made, as of him that makes it; there no notice need to be given, nor demand made. Coo. 7. 29. And therefore if I promise mony to the Marriage of my Daughter, or Kinswoman; in this case they need not to give mee notice of the Marriage: But if the promise be penal, that if you marry her, and I do not pay you twenty pound in three weeks, I shall pay forty pound, in this case, the forty pound must be demanded. So if I promise a woman, that in case shee will marry my Son, I will give her the one half of all my Lands and Goods; in this case, it seems, there must be notice, before any Suit bee begun. Old B. of Entries. fol. 4. New Book of Entries. 2. So if I promise a man twenty pound, when hee marrieth any woman whatsoever; in this case, before hee sue mee, hee is to give mee notice of the Marriage.

Part 7.

Notice of a Marriage.

Notice of an Award.

If one promise mee mony at the day of my Marriage, I need not, nor need I to shew in my declaration, if I sue upon it, that I gave him notice of my Marriage before I married. Croo. 1. 23. But if a Collateral thing be to be done on the Marriage-day, there perhaps notice must be given, although it be to be done to the party himself. Bulstr. 3. part 236.

If one promise to pay mee such a sum of mony upon my Return into England, I must shew in my Count, that I gave him expresse notice, and the time and place of doing it. Croo. 1. 412. There needs no notice to be given of an Award, but the parties at their peril are bound to take notice of it. Hobb. Rep. pl. 56.

If a man finde my goods, or take them from mee, or from another that hath them, or if hee have them by my delivery, or by the delivery of another, to whom I delivered them, and hee either keep them from mee, dispose of them, spoil, or convert them to his own use, or they be stollen, or taken from him, and I suffer damage by it; I may in some cases for my Relief have this Action of the Case, Trover, or some other. But I must first make a demand of my goods.

To pay for Corn as much as another gives.

If one buy Barley of mee, and assume to pay for it as much as I shall have of any other, abating a penny onely in every bushel; in this case I must give notice to the Buyer what another gave, and so set forth in my declaration: But if the Agreement be to pay so much as I. S. paid; in this case no notice is needful to be given. Croo. 2. 432.

To save harmlesse from engagements.

If one assume to save harmlesse I. S. of all obligations wherein he shall be bound for I. N. in this hee need not give notice; but may shew that he was bound in an obligation for I. N. from which he was not saved harmlesse; this is good enough. Croo. 2. 432.

Notice of a Decree.

If one assume to mee, in consideration that I shall procure such a decree in Chancery, in such a cause there, that hee will give mee ten pound for it; in this case I must give him personal notice of the decree: But if hee himself, to whom I should give notice, be one of the parties to the Suit in Chancery, there I need not give him notice of it. Yelverton. 121.

Notice of a Marriage.

If I promise to another man, upon the Marriage of my Son with his Daughter, at the Marriage to give a hundred pound to my Son; in this case notice must be given, or else how can hee pay the mony at the Marriage

riage day. Yelverton. 121, 122. And yet if one promise mee a hundred pound, if I will marry his Daughter, upon the day of Marriage, or within ten daies after upon request; in this case no notice is needful, for it is implied in the request. Bendloes. 159.

If one assume, in consideration of divers sums paid to him, that if Cooper affirm at his return from beyond Sea, that hee received of mee twenty pound, that hee will pay mee the twenty pound; in this case, if I sue, I must shew that hee did affirm it such a day, year, and place, but before whom hee affirmed, it is not material; and I am not bound to give, but hee is bound to take notice thereof, the thing being to be done by a stranger, and lying as much in his, as in my knowledge. Croo. 2. 492, 493. Notice of a proof of athing.

If three assume to pay, or give, upon Request, if the Request be made to one of them, it is good enough. Noys Rep. 135. Request to one, good for more.

If I sell my Horse for ten pound, and no day of payment, in the Suit for it, it must be laid to be paid cum inde requisit esset. Brownl. and Goldsb. 12, 13.

If one be bound by promise to mee, to pay mee such mony as I shall lend to I. S. and I do after lend him a hundred pound, I may bring my Action upon the promise, without giving of notice to him; and hee at his peril must take notice of it. Adjudged. Affirmed in Error. P. 6 Jac. Harveley and Leighton. B. R. Croo 2. Car. 34. Jenkinson. Cent. 7. Case 11. 92. And I am not bound to seek unto him to give mee notice; but where a duty doth arise upon a private Act of the Plaintiff, there notice must be given of it, before the Action can be brought. Jenkinson. Cent. 7. Case 11. Hobb. 51.

If I be to pay mony to one upon his return from Rome into England, hee must give mee notice of this. So if I sell Tuns of Woad for so much as another shall give before such a day, and name none: So where the Action is to arise upon a secret Act of the Plaintiff, and the breach is so private, that the Defendant by no possibility can know it without notice. Hobb. 51. Jenk. Century 7. Case 92.

If one promise mee, so I will suffer such a one to dwell in my house such a time, that hee will save mee from damage by it, and that for every farthing damage hee will give mee two pence; in this case I need not in my Action brought, shew how many farthings damage I have sustained. Yelverton. 220.

For Collateral Matters, which are not duties, a request is material, and are not like a duty; as for a debt which is due, and no day of payment expressed, there it shall be alledged to be, when hee shall be thereunto requested, generally. Brownl. and Goldsb. 13, 14. For Collateral Matters Request is needful.

If I sell my Horse for mony, and no day of payment is set, it is due presently, and I must say in my declaration, Solvend. &c. cum inde requisit esset. Brownl. and Goldsb. 14.

If one say, marry my Neece, and when I come from London I will give you a hundred pound; and the Action was brought thus, in consideration that hee would marry A. promiseth the Plaintiff a hundred pound after hee returned from London, when he was thereunto requested, and for the last words the Action was maintainable. Brownl. and Goldsb. 13, 14. Notice of a Marriage. Part 8.

If one promise mee, that if I take such a woman to wife, he will pay mee twenty pound when he shall be thereto requested after the Marriage; in this case there needs no special Request to be, or be pleaded. Huttons Rep. 2.

In cases where it doth rest in the equal knowledge of the parties what is

Notice. is done, there no notice is to be given by the one party to the other what is done, but where it is more in the knowledge of him to whom it is to be done, there notice is to be given. And in case where a penalty is to be recovered for the not doing of the thing, there notice must be given: but where bare damages onely is to be recovered, there it is not needful. Bulst. 1. part 12, 13. Also there is a difference, where the thing to be done is executed, and where it is executory; where executed, no notice is to be given, as what Cloth you shall deliver to I. S. I will see you paid for it; in this case hee must give notice what Cloth hee doth deliver.

Also there is this difference when it rests upon a matter to be done between the parties themselves; there notice is to be given of this to the party who is to make a payment of mony upon an Act to be done by the other, to whom the payment is to be made: otherwise where it is to be done by a stranger, for there hee hath taken upon himself to take the notice at his peril. Bulstr. 3. 44.

Of a Marriage. If one promise to mee so much if I marry such a one, or if hee marry my Daughter; in this case no notice is to be given of the Marriage. And so it seems, though part of the mony be to be paid on the Marriage-day: But if it be a Collateral thing that is to be done on the Marriage-day, there notice must be given. Bulstr. 3. 236, 237.

Request. Averment. If I be bound to pay another mony on a bond, and the Obligée, in consideration that I will pay so much mony such a day to I. S. to his use, in satisfaction of a debt due from mee to him, assume and promise to mee, that hee will deliver up the bond when it shall be required; here must be a Request made, and a special Request laid in the declaration, and the general cum inde requisit will not serve. Bulstr. 3. 297.

If one do promise to another ten pound to build a house, by Croo. Just. hee is not to have the mony, until hee hath built the house; But by Cook Just. hee is to have his mony before; and if the other do not build the house according to his Agreement, hee may have an Action against him, and so recover damages. Bulstr. 2. 334.

Of a Marriage. If an Action be brought for payment of a Marriage-portion generally, there is to be a special notice alledged in the declaration, or it is not good.

If A. promise that B. shall pay such a sum of mony to I. D. upon his Marriage-day; in this case no notice is necessary, but hee must pay it at his peril. B. Jones. Bulstr. 3. 326. But a Request will supply a notice of a Marriage, or any such like thing. Coo. 8. 89. And so in all cases where notice is to be averred and alledged in the pleading, to warrant the Action, there it is necessary to be made and given to the party. See for this, chap. 14. See more. Croo. 1. 280, 281. Croo. 2. 652. Croo. 1. last publisht. 85. 91. 97. 133. 210. Leonard. pl. 157. 169.

CHAP. V.

Of an Action upon the Case for a Nusance; and where this Action will lye, or not.

Nusance, what. Sect. 1. The kinds. THis Action upon the Case doth sometimes arise, and grow in and about a Nusance, which is said to be where any thing is done, or omitted, by a man upon his own ground, or elsewhere, to the unlawful hurt and annoyance of another that is his neighbour in his Free-Land, or otherwise:

other wise: and this is either common, when it is, or may be a grievance to many: or special, when it is onely, or especially a hurt to some few: or particular, when it is, or may be a hurt to one particular man. F. N. B. 93. Old N. B. 108. Dyer. 195.

And so it is a hurt and damage to him in or about his dwelling or habitation; or in his way, water, common, or some other such like profit or easement that he hath, the which may be done by building, pulling down, stopping, diversion, or some such like alteration. And for this there is a redresse two waies; one by this Action, which is to recover damages, and to have judgement, that the Nuisance shall be cast down or abated, as the case requireth: Or the party grieved may enter and abate the Nuisance himself; but if hee abate it himself before Action brought, or hanging the writ, hee cannot afterwards have this Action.

For a Nuisance done to or upon the Land the man hath in the right of his wife, hee alone may sue, or they may sue together. Bulstr. 2. 14. Croo. 1. last publisht. 61. Hetleys Rep. 143. And if shee do survive, shee shall have the Action alone. Croo. 1. 316.

Where this Action will lye; and for what; or not.

1. For the persons that sue, and are sued therein.

Husband and Wife.

If the owner of the Land stop my way, and then lease it to B. and B. doth not open it, but continue the Nuisance; I may have this Action against him. Trin. 13 Jac. B. R. Bolds Case.

If I be but a Coppy-holder, I may have this Action against one that eats up my Common, so that I lose it altogether, or cannot have it so beneficially as I was used to have it. Coo. 9. 112. 231. 11. 117.

Coppy-holders.

If a Nuisance be made on my Land by a stop of water, and causing of it to surround my ground, or the like, and I sell it, the Vendee may have this Action for the continuance of the Nuisance, or the repetition of it, by turning a Cock new made to draw water, &c. but not for any thing before the sale. Coo. 5. 101. Croo. 1. last publisht. 402. Dyer. 319. 4. Ass. 3. 2 H. 4. 11.

Assigns of Land.

So the heir for a Nuisance begun in his Ancestors time, and now continued in his time, Coo. 5. 101. And the heir of the Feoffee shall have it against the Feoffee of him who levied it. F. N. B. 121.

A. hath an antient light, and B. stops it, by the erecting of a new house, and then makes a Lease of his new house to C. in this case no Action can be brought against C. for hee did not the wrong, and he may not pull it down. Trin. 13 Jac. B. R. Bolds Case.

If one erect a house so neer to mine, that the Rain discends upon my house from his new house, my heir after my death may bring the Action for the Nuisance done in my time. Adjudged. p. 25 Eliz.

If a Nuisance be erected in my time, and I devise the Land, and it be continued after my time; the Devisee may have the Action, for the continuance is as a new erecting. Croo. 2. 231.

Some would have this difference to be admitted here, That where the Nuisance is all at once, and total, as if I have pot-water running from a River to my house, and another man in his ground doth stop it up quite before it come to mee, and hee dye, or grant away his Land; that in this case my heir or Feoffee shall have no remedy for any thing done before their time: But for any Nuisance done after, the heir or Feoffee may have remedy: So that if one erect a Bank in a River, whereby part of my Land is drowned, and after, I make a Feoffment of the Land to I. S. and then another part is drowned by reason of that Banks that for this the Feoffee may bring the Action; and so for Non-Feasance, the nonrepairing of a Bank, &c. Croo. 1. last publisht. 402, 403.

One Tenant in Common may have it against another Tenant in Com-

Tenants in Common.

Common for a Nuisance done amongst them: And so one may have it against the other for breaking a Gutter between their houses; or for making of a Lime-pit in the Land in Common between them, by which the water surrounds his house. 2 H. 5. pl. 12. 13 H. 7. 26. Yelverton. 161. And yet it is said, that such a Tenant may not have it against another Tenant that hurts him in his Common by digging of Pits. Noys Rep. 84.

Tenants in Common must joyn in an Action for a Nuisance done upon their Land; as for the taking away of a meer-stone from off their Land. Noys Rep. 137 1. Lib. Intr. 9. C. sect. 1. Croo. 2. 231.

Against Churchwardens.

It may lye against Churchwardens, for not repairing of a Gutter, by which a Nuisance is, or may be done to my house. Lib. Intr. 10. D. sect. 1.

Against a Vicar.

It may lye against a Vicar, that disturbeth me in my burial in an Isle of the Church, where I do prescribe to have right so to do. Lib. Intr. 8. B. sect. 7.

If two conspire to do an unlawful Act in a Case for which this Action is given, and one of them onely do prosecute it, in the execution of it, yet I may have this Action against them both. Lanes Rep. 49. See for this, chap. 15. sect. 2. case 4. 9. 17. 19.

2. For the nature of the Action. Sect. 2.

That if a man in his own ground, levy that which is a Nuisance to my ground, I may have this Action, or some other Action; but not Trespass quare vi & armis, as where it is done in mine own ground. 31 Ed. 3. Action; &c. 38.

That for the not making, or amending of a Ditch, &c. this is the most proper Remedy. But for the breaking of a Bridge, or stopping of a water, whereby I am damnified, there perhaps I may have an Assize of Nuisance, or some other Remedy also. 11 H. 4. 82. 14 H. 8. 38.

That where I have the Fee-simple of a house and Land, to which I have common appurtenant, and a way to it, and one that is Tenant of the Land over which I have my way, hath in part stopt it; I may have this Action, and this is the proper Action: So also, if the Nuisance be by a Stranger; or if the Tenant that stops it have but a Lease for years, and I have but a Lease for years in that to which the way doth belong, albeit it be totally stopt. But if I have a Free-hold in that to which it doth belong, and hee that hath stopt it, the Free-hold of the place wherein he hath stopt it, and it be a total stopping; there I may as properly have remedy by some other Action, as by this, and it is my choice to have recourse to the one, or the other remedy. Croo. 1. last publisht. 466. 845. Dyer. 250. 21 H. 7. 30. 2 H. 4. 11. 27 H. 8. 31. 27 H. 6. 27.

So that for Nuisances in general, and especially for such Nuisances as are to a mans way, Water course, Conduit, Common of Pasture, or the like; there are in some Cases more Remedies than one: For in some Cases, for the redresse of it, there lyes an Assize of Nuisance, and in other Cases a Quod permittat, and other Remedies. And this regularly seems to be the Law herein, That for special Nuisances to one man more than another, and to one man in special, if hee be a Free-holder of the thing to which the way, water, &c. whereabout the Nuisance is, and the stop be of the whole, or of the greatest part of the water, &c. in that case the most proper Remedy is by Assize, Quod permittat, or some other Writ; and yet therein also hee may have this Action of the Case if he will. Dyer. 248. 250. Leonard. Rep. 249. 10 H. 7. 21.

But if the party to whom the Nuisance is done, have onely a Lease for years, or some Copy-hold estate in the thing to which that wherein the

Nuisance

Nuisance is both belong, albeit the Nuisance be total: Or if he have the Free-hold of the thing to which, &c. and the Nuisance be onely partial; that in these Cases the onely proper Remedy is by this special Action of the Case; and where I have the Free-hold, I may have the one or other Remedy. Sulies Rep. 164. Coo. 5. 73. 101. 9. 113. F.N.B. 18. a. Godb. Rep. 233. Leonards Rep. pl. 333. Dyer. 248. 250. Croo. 1. last publisht. 402. 467. 843. Croo. 2. 673. F.N.B. 176. 21 Ed. 3. 6. 34 H. 6. 4. 21 H. 7. 29. Dyer. 320.

And thus it lyeth in the Cases hereafter following for particular Nuisances.

If a man set up a house upon a new foundation, so near to my antient house, that thereby he stops up my windows, and takes away my light, the Aire, and prospect; I may have this Action. For a man may not in London, or elsewhere, inlarge his house in breadth or length, to stop up his neighbours light, but upon an antient foundation he may build it as high as he will. Coo. 9. 56. New B. of Entries. 19. About a house, and disturbance therein.

But if the building be upon an old foundation, and where there was a house before; no Action will lye for this, cujus est solum ejus est usque ad cœlum. New B. of Entries. fol. 19, 20. Coo. 5. 10. 9. 55. But otherwise if a man shall by such a building, or by the setting up of a Wood-pile, or the like means, disturb me in my light, I have to my antient house; I may have this Action against him. Hill. 9 Jac. B. R. Hughes Case. Mich. 9 Jac. Ward and Chestners. B. R. 7 Ed. 3. 261. Action, &c. 11. 22 H. 6. 15.

If I have a building beneath, and another man a building above me, and I suffer mine to decay so as to hazard his, or he suffer his to decay so as to hazard mine; each of us may have this Action against the other. Old B. of Entries. fol. 3. Kelw. 48.

If a man doth over-build my house, so that his house Eves do drop upon my house, and cause it to perish, or trouble my dwelling; I may have this Action. 22 H. 6. 14. Brownl. and Goldsb. 4. See chap. 15. sect. 2. case 2. And yet in Trin. 42 Eliz. between Nicholson and Bradshaw; The Lessee for years of a shop, brought an Action against one that was Tenant at will of a Kitchin over the Shop, for suffering it to decay, and to spoil the Wares of his Shop; and after a Judgement for the Plaintiff it was reversed. See Brownl. 1. part 4. Croo. 22 H. 7. 98.

Yet if a man have a house very neer mine, and suffer it to decay, and fall, and with the fall thereof to throw down some of mine, it seems I may have this Action for this. Coo. upon Lit. 56. Coo. 5. 73. 107.

If one house be built hanging over another wrongfully, and after they come both into one hand, the wrong is now purged, so that if after they come into several hands, neither parties is to complain of the wrong before. Hobb. 173.

The erecting of a Dye-house, Tan-house, Piggty, house of Office, Brew-house, or Chimney, or of a Chandler, or Butchers shop, or Lime-kiln, may be a Nuisance to a neighbourhood, by which, if I have any considerable offence in the smell, to my health, or by the smoke, to our bodies, that live in the house, or Trees of the Garden, or Yard, I may have this Action for my relief therein. Pasche 5 Jac. B. R. But in these Cases the thing erected must be used. And so if one set up a Piggty under my house, and keep Piggs in it, or a house of Office, Lime-kiln, or Brew-house, and use it so neer to my house, that the smell thereof doth annoy me, and hazard my health, or the smoke of the Chimney, Brew-

house, or Lime-kiln hurt my Trees, or lay Dung or Cartion so neer to my house, that I am annoyed by it; in these Cases, and for these wrongs, I may have this Remedy. Coo. 8. 73. 107. 108. Coo. 9. 54. Mich. 8 Jac. Aldred's Case.

So the building of a Brew-house, or the keeping of a Chandlers, or Butchers Shop, so near my house, in a place inconvenient, to the offence of mee in my Garden, or House, may be such a Nusance, for which I may have this Action. Trin. 13 Car. 1. B. R. New Book of Entries. fol. 18. But if such a man shall set up his Trade by mee, though this be offensive to mee, by the laying of stinking heaps at his door, and the like; I can have no Action for this, unless it be very great, and much offensive. By Cook and Warburton, Justices. Mich. 8 Jac. Croo. 1. 367. 13 H. 7. 26.

If a man shall build, or set up a wall against the window, or light of my house; I may have this Action against him. Coo. 9. 54. 5. 108. And this, albeit hee build upon his own ground: So if hee set up a Wood pile upon his own ground, to stop my antient lights; but if it prevent my prospect onely, no Action will lye for this. Coo. 9. 54. But if two men be owners of two parcels of Land adjoyning, and one of them build a house on his Land, and make windows and lights looking into the others Lands, and this continueth thirty or forty years, the other may build, or lay any thing upon his own Land, and stop them. Croo. 1. last publishe. 118. 829. See more. Yelverton. 225. 210. 215. Bulstr. 1. part 116. chap. 15. sect. 2. case 7. 8. 10. 14. 36. 23. 33.

Custome or prescription. Prospect. About a way, and a disturbance therein. Sect. 4.

Nor will any custome or prescription bear a man out, or excuse him for such a Nusance. But for the taking away of, or my hindrance in my prospect of my house onely, no Action will lye. Croo. 8. 57.

If I have had, time out of mind, a private way to my House, Ground, Common, or other place, by custome, prescription, keepment, or otherwise, and another man stop, or marre it in all, or impart; I may have this Action for my Remedy. And for the opening hereof, take these things,

If a man raise a Will, or a Dike crosse my way, one prescribes that hee, and all those, &c. have had a way from his house in D. over Green Acre in S. and over Black-Acree, unto such a place in P. and that the Defendant had stopped his way in S. Croo. 1. last publishe. 427. 619.

So one seized of a house in Fee, of a house in St. Martins in the Fields, and that hee, and all those that have had the said house, have had a foot way from the said house, to the River of Thames, in the same Parish, and that hee so seized, let a Lease of it to the Plaintiff for years, and that the Defendant had erected a gate crosse the said way, &c. and it was adjudged for the Plaintiff. Croo. 2. 673.

The Plaintiff declared, that hee was seized of a Messuage, &c. and that hee, and his Ancestors, and those whose estate, &c. have had a way from his Messuage to such a place for him, his Servants, and Farmers as well on foot, as with Carts, &c. and retrot sum, and that the Defendant had stopt it, &c. Yelverton. 159.

Hee that claims such a way, must prescribe tanquam ad terminum ad quem, for hee may not go over my ground, but to the right place. Hobb. 234.

If the Inhabitants of a Parish have, time out of mind, a way to their Common, and they be now disturbed in it; they may have this Action. Croo. 1. last publishe. 180.

If a way be in an antient City between two streets, that all the City have used, time out of mind, and one make a Ditch, and erect a Pale crosse

crosse this way, no Action will lye for this, but it shall be punished in a Leete. Croo. 1. last publisht. 664.

If A. have a way over the Close of H. and H. sows the Close, and leaves a way in another part of the Close, yet T. may justifie to go where the antient way is, and is not bound to go in the new unplow'd way. Adjudged. Noys Rep. 128.

If I declare that I am seized in Fee of Black-Acre, and that I have a way to it by such and such a gate, and that the Defendant hath fastened the gate with a lock, &c. this Action will lye. Noys Rep. 112. So if he set up a gate where none was before. Godb. Rep. pl. 67.

One declares, that he is an Inhabitant of the Parish of A. hath, time out of mind, had a common way for foot and horse to go and ride from A. to the Parish-Church there on Lords and Festival dates, and other convenient times, to hear divine service, and to carry the bodies of persons dying in the Parish, to the Church, to be buried there, and shewed all the way, and through which Closes they were to go, and set forth the disturbance to bee by digging of a ditch in one of the said grounds. Hutton. 27.

One declared, that he ought to have a way over the Defendants Land, for his carriages at any time when he should have occasion to use the same, and that the Defendant stopped the same by the making of a hedge. Bulstr. 2. part 121.

If I have the Fee-simple of a House and Land in D. whereto I have Common appurtenant in such a place, and have, time out of mind, such a way to it, and it be totally stopt, that I cannot come at my Common; I may have this Action, or an Assize of Nusance at my choice, especially where the stopping is made by one that is Tenant for years, or by a Stranger that hath nothing to do with the Land. Croo. 1. last publisht. 845. Adjudged. Noys Rep. 37.

If I be seized of a House and Meadow in S. &c. and by T. W. and all those whose estate, &c. from time, &c. for themselves, their Farmers and Tenants have had a way to carry Hay out of the said Meadow, to the said House over a certain Meadow of the Defendants in S. and so describe the passage all along; this Action will lye if I be disturbed in it. Bendl. 160. And how a prescription may be made for a way, See Siles Rep. 206, 301. 371.

If I have an antient house in A. and an antient crosse way by prescription in, by and through a certain way in Sale in the County aforesaid unto such a Close in D. in the said County, and hee doth stop it up by making of a hedge in the Close of D. &c. this is actionable. Noys Rep. 9. See more. Noys Rep. 120. Bulstr. 1. part 47. Godb. Rep. 4. chap. 15. sect. 2. case 6. 12. 18. 20. 25. 27. 28. 30. 31. 39.

If a Commoner be ousted of, or disturbed in his antient Common, by drowning of it, planting of Coneys upon it, plowing, or inclosure of it, or the like; hee may in some cases have this Action. Goldsb. and Brownl. 17. But for the opening hereof, take these Cases.

About Common of Pasture, or Estovers, and a disturbance therein. Sect. 5.

If I am a Copy-holder, and am to have Common in the Lords waste for two Sheep, for every Acre of Arable Land, and the Lord dig holes, and put Coneys there, that I cannot have my Common, as I have been used to have it; I may have this Action against the Lord. Croo. 1. last publisht. 390.

If I have Common in anothers ground, and hee doth inclose it, or make a Fish-pool in it, that I cannot have my Common; this Action will lye. Hetleys Rep. 143. And so generally in all cases where I have an

antient Common of Pasture by custome, or prescription, and any out shall by surfeiture, surcharge, trespasse of his Cattle, or the like means, eat up, or spoil the grasse so much, that there is not sufficient left for the feeding of my Cattle, as formerly, and I cannot have the profit of it as I have had, I may have this Action: But if the Freeriate be so small, that I have notwithstanding feeding sufficient for my Cattle; no Action will lye for this. Croo. 1. 355. Coo. 9. 111. 5. 76. Instit. 3. pars 56. Croo. 1. last publisht. Coo. 4. 39. 8. 79.

If I have Cippers in the Wood of another by prescription, and the owner of the Wood cut it down all, and doth not leave sufficient for me; I may have remedy by this Action. Coo. 9. 112.

If one Commoner surcharge the Common, that the rest cannot have their as they have been wont to have it; same say the rest of the Commoners may have this Action against him. Noys Rep. 30. Stile Rep. 169.

If one pig Pits, or make Trenches where my Common is, that my Cattle go in danger of their lives thereby; I may have this Action. Noys Rep. 84. A Commoner brought his Action against one for digging Clay, and laying it upon the Common, and for carrying the same over the Common, &c. by which, &c. Godb. Rep. pl. 437. 442.

A Commoner brought an Action upon the Case against a stranger for his beasts coming in, and feeding upon the Common. Brownl. 2. part 55. By Cook. Walmsly and Warburton, the Action will lye. Foster against it. Hill. 8 Jac. Co. B.

So for erecting of Cottages upon the Common. Godb. Rep. pl. 350.

If I have Land in D. and by reason thereof after Harvest several Common in twenty Acres of Land adjoyning to it every year, and the owner plow up this twenty Acres; it seems I may have this Action. Croo. 1. last publisht. 198. 199. and am not put to an Assize. Dyer. 258. 2 H. 4. 11. See Leonards Rep. pl. 249. chap. 15. sect. 2. Case 24. 38, 39.

About water, and a watring-course, and a distrubance therein.

If I have a water, that time out of mind, hath come above, or under ground to my house, or grounds, be it in, or out of a Conduit, or Pipe, and the same is stopt, diverted, or corrupted, in part, or in whole; I may have this Action against him that doth it. New B. Entries. 18. Coo. 5. 73. F. N. B. 184. Croo. 1. 359.

But yet if such a water be common to every body, or to every body in such a Parish, and such a Nuisance be; not this Action, but some other Remedy must be had: But if any special damage come to me thereby, as if one shall poison such a water, and I happen to bring my Cattle thereto to water, and they dye; I may perhaps have this Action for the Iesse, Croo. 2. 263. Coo. 5. 103. 9. 113. See Coo. 5. 73. 22 H. 6. 46. and chap. 12.

Mill.

If I have a Mill, and a water running to it, time out of mind, and another turn the water by digging of a Trench, or otherwise, that I cannot grinde as formerly I did, I may have remedy by this Action. Croo. 1. 263. See chap. 15. sect. 2. Case 1. 13.

If I have an Acre of Land adjoyning to yours, and it is drowned, I may trench it, or make a Sluce to draw it out, although the next be drowned by it, for he may trench it, and make a Sluce also. 12 H. 8. 3.

If one have antiently Ponds, which are replenished by Chanels out of a River, he may not change the Chanels, if any prejudice accrue

to

to another by it. Hetleys Rep. 84. See Bulstr. 3. 79. 3. 99.

If one have ground adjoyning to a little River, and another throw in stones into the River, and stop up the water, that it doth overflow and hurt my Meadow; I may have this Action against him. Croo. 1. last publisht. 491. But if one leay a Dunme upon the River, whereby the water overflows my grounds, I may have this Action. Croo. 1. last publisht. 402. See chap. 1. sect. 2. case 17. 13. 22. 26. 33. 34. 35. 37.

If I have an antient Mill, and an antient Water-course to maintain it, and any man shall divert it, that I cannot have recourse of it to my Mill, as formerly, to maintain a new Mill he hath set up, or for any other cause; I may have this Action against him. Sciks Rep. 370. 12 H. 4. 4. 21 H. 7. 30. Dyer. 195. 249. Cook 4. 86. Turning my water from my Mill.

If one do by any means stop, or damme up the River higher than formerly, so that my ground is dried by it; I may have this Action against him for it. Quare Naltavit stagnum, or quod erexit stagnum, &c. Dyer. 248. Br. Nusance 9. Jenkins Century. 6. Case 85. Godb. Rep. pl. 70. Damming up a River or Ditch, to surround my Land.

If one damme up a ditch, and the water in it so much thereby, that his drown my Corn, I may have this Action. Regist. Orig. 95. B. 97.

This Action will lye for stopping of a Ditch, or water-course, and turning it out of his antient course, by which my Land is drowned. F.N.B. 88 E. 89. M. 39 H. 6. 32. 11 H. 4. 88. 14 H. 8. 31. New B. of Entries 28. So for not scouring of a Ditch, by which my Land is overflown. Godb. Rep. pl. 68. Regist. Orig. 101. A. 7 H. 4. 31. 12 H. 4. 6. 29 Ed. 3. 32. F.N.B. 93. G. About a Ditch

If I have a Pit, or watering-place by prescription, for mine own use, albeit it be not in Common, and one disturb me in it, I may have this Action. 21 H. 7. 35. No Lib. Intr. 18. D. sect. 15. About a Pit, or Watering-place.

So if the Inhabitants of a Parish have a watering-place amongst us by prescription, and (I, being one of the Parish) we be disturbed in it, each of us may have this Action against him that maketh the disturbance. Finches Ley. 187. 27 H. 8. 27.

If one cut down the Bank of a River, whereby my Meadows is drowned; I may have this Action against him. Croo. 1. last publisht. 747. Hetleys Rep. 118. See chap. 15. sect. 2. case 35. Cutting the Bank of a River, whereby, &c.

If there be a charge upon any man by reason of his Tenure of a house, or Land, to repair any Bank, Bridge, Gutter, private way, or the like, and hee doth not keep it repaired, whereby I have any special prejudice, I may have remedy by this Action. Old B. of Entries. 10. Action, &c. 71. 2 H. 5. 3. Or if one be so bound to repair the Sea-banks, or Sea-worn-banks, and neglect it, and hereby my ground is drowned, or I have any special damage; I may have this Action. But if in this case the damage happen by some extraordinary accident, as inundation, or the like, no Action will lye for this. Croo. 10. 139. 29 Ed. 3. 32. 12 H. 4. 7. F.N.B. 93. G. Croo. 1. last publisht. 402, 403. See chap. 15. sect. 2. case 19. But if a man comes to such a thing, and it is so ruinous and decayed when he comes first to it, it seems in this case hee is not to be charged with it. Croo. 1. last publisht. 520. About Reparations of a Bank, of a Bridge, of a Gutter, of a Way. Sect. 6.

And if one break the Sea, or a River Bank, and hereby my Land is drowned; I may have this Action against him. Croo. 1. last publisht. 402, 403. F.N.B. 86. F. 89. G. 29 Ed. 3. 32.

If one have a house, or room over my house, or room, and suffer it to decay, and fall upon my house, and hurt it; I may have this Action: And so perhaps I may if he put extraordinary weight upon the room above, and so

to break it down upon me; I may have this Action. Croo. 1. last publisht 285. 492.

About Conys and a Warren.

This Nuisance may be by Conys, or Cony-burrows: And for this, note these things,

1. That if the Tenants have Common in the Lords waste, and the Lord shall have, or hath a Warren in it, or hath no Warren in it, and he hath, or shall have so many Conys, and dig so many Burrows in it, that I that am a Tenant cannot have the profit of my Common, as formerly I have had it; in this case I may have this Action against him. Croo. 1. last publisht 300. Yelverton. 143. Winch. 16. Yelverton. 104.

Free Warren.

2. This Action will not lye against another man for making Cony-Burrows, and planting of Conys in several grounds of his own (whether he have, or have not a free Warren there) to the Trespasse of the neighbours. Coo. 5. 104. Rowlston's Case.

3. That albeit Commoners, or others be oppressed by Conys, and a Coniger adjacent, yet he may not go into the Coniger, and kill the Conys there, or destroy them, as wee do Fores, and vermine. But if the surcharge be by the Lord upon his Tenants in his own waste; each of them may have his Action against him, but not kill his Conys there: So for Fish, if there be a Fish-pond, they cannot destroy the Fish: Nor may I, where my neighbour in his adjacent ground doth keep such a store of Conys, as that I am trespassed by them, go into his own ground, and kill them; but I may kill them when they come upon my own ground. Yelverton. 104. Owens Rep. 114. Adjudged. H. 9. Jac. B. R. Croo. 1. 277. last publisht. 547. An Action was brought, and judgement had against one, for that his Conys came into his Corn, and the judgement was reversed in a Writ of Error, for no man may have an Action against mee for my Conys, no more than for my Pigeons coming into his Corn. Croo. 1. 282. 237.

4. That this Action will not lye against another man for the purchasing, and setting up of a new Warren, albeit it be to the prejudice of me, that have an old Warren adjoyning to it. Coo. 5. 104. Bowlston's Case.

5. That if the Lord build a Lodge, make a Coniger, and thereby oppresse his Tenants, and his Heir continue, or increase the Nuisance; the Tenants may have this Action against the Heir, as they might have had against the Father or Ancestor. Yelverton. 144. Winch. 16. Owen 114.

6. If one put Cats in my Warren amongst my Conys; it is said, I may have this Action for this wrong. M. 2 Jac. B. R. by two Justices. Old B. of Entries. 13. See more of this, chap. 15. sect. 2. case 21. 24.

There are other wrongs that go under the name of Nuisances, for relief, against which this Action upon the Case is given.

About a Ferry, Sect. 7.

This Action will lye for mee against him that shall set up a new Ferry to the prejudice of mee in my antient Ferry in the place. 22 H. 6. 14.

So it will lye against him that shall threaten my Ferry-man, that hee dare not carry his passengers as formerly hee hath done; or that shall threaten the passengers, that they dare not come as formerly they have done, if by this I suffer any damage. 22 *H.* 6. 17. pl. 32.

About a Foldage, or Field-course.

This Action will lye for mee against him that shall disturb mee in my Foldage, to which I have right: As where I am seized in Fee of a Manor, and I, and my Ancestors, time out of mind, have had a Fold-course for our Sheep, not exceeding three hundred in seventy Acres of Land in

T.

T. every year from fourteen dayes after the Corn is carried away, to continue till Lady day within the Land, not sown again; or from such to such a day, or the like, and I am disturbed in this: And a man may not by a prescription to a power to inclose, be deprived of this. Croo. 1. 312. New B. of Entries. 14. D. sect. 12. Coo. 5. 76. 13 H. 7. 26. So if I be Lord of a Mannor, and have, time out of mind, had the free foldage of the beasts of my Tenants to manure my Land, and be interrupted in it; I may have this Action. Leonards Rep. pl. 14. 199. Huttons Rep. 102, 103.

This Action will lye for mee against him that shall disturb mee in my walk, in a Forrest, which I have right unto by custome, or prescription. Coo. 5. 76. New B. of Entries. 9. 11. 14. 13 H. 7. 26. Croo. 1. part of Inst. 56. About a walk in a Forrest.

If one erect a Dye-house, and poison the water, wherein I have fishing, so that the fish is destroyed; I may have this Action. Coo. 9. 59. About a Fishing

If I have had a Mill, time out of mind, on a River, and another man shall set up a new Mill by my Mill, whereby hee takes away my custome; no Action will lye for this. And yet if by the custome of the place the Lord of the Mannor hath such an antient Mill, and therein the grinding of all the Grist of his Tenants, and where none ever had any such Mill but the Lord, there perhaps for this the Lord may have this Action. But in the first Case, if by the setting up of the new Mill he take away part of my Water, that it comes not so freely to mee as formerly it did, or it doth otherwise damnifie mee; I may have this Action against him for this. But otherwise any man that will, may erect a new Mill, if hee do not take away the water from other Mills. Leonards Rep. pl. 368. Croo. 1. part 133. Broo. chap. 36. 11 H. 4. 45. 47. 22 H. 6. 14. Old B. of Entries. 10. Croo. 1. last publisht. 112, 113. About a Mill. Sect. 8.

If any one shall break down the Banks or Sluces of my Mill-pond, in that this water is diverted, and comes not as formerly to my Mill; I may have this Action. Old B. of Entries. 10.

For a custome that Tenants shall grinde at the Lords Mill. See Bulstr. 2. 195.

If I have, by custome or prescription, the single Trade of a Bake-house for a whole Town, and another shall set up a Bake-house there, and take away my Trade; in this case I may have this Action against him. Coo. 8. 225. Action, &c. Broo. 50. And therefore if I be Lord of a Mannor, and, time out of mind, have had a Bake-house in my Mannor, and a Baker there to bake white Bread, and horse bread for all the Inhabitants, strangers and passengers, and another set up a Bake-house there, and by this I lose my custome; I may have this Action against him. Croo. 1. last publisht. 203. See Leonards Rep. pl. 199. See chap. 15. sect. 2. case 16. About a Bake-house.

This Action will lye against him that shall hinder, disturb, or prejudice mee in the taking, or use of my Franchize, or Liberty: As where I have the execution and return of process in a hundred, or other place, and another man, without authority, shall take upon him to do it there. F. N. B. 95. B. Regist. Orig. 103, 104. 5 Ed. 3. 150. pl. 20. For disturbing me in my Franchize. About Return of Writs.

So where one shall take away my Estray out of my Mannor, and out of my possession, after I have once seized upon him. 13 Ed. 3. Writ, &c. 674. But if taken before seizure, the Action will not lye. 31 Ed. 3. Writ 133. About an Estray.

So where one shall disturb mee in the keeping of my Court Leete, or other About a Leete,

other Court. Fitz. fol. 94. 19 R. 2. Action, &c. 52. Or shall distrain one to come to his Leete, that doth owe his Suit to my Leete. Old B. of Entries. 5. New B. of Entries. 10. 11 H 4. 64.

About a Market or Fair.

So this Action will lye against him that shall set up a Market, or Fair, without authority, to prejudice mee in my Market, or Fair. 22 H. 6. 14. 11 H. 4. 74. Mich. 41. 42 Eliz. Coo. B. Maines and the City of London. But some have said, that the remedy in this case must bee by a Quod permittat, and not by this Action. 41 Ed. 3. 24.

Or shall disturb mee in the keeping and holding of my Fair, or Market. 16 Ed. 2. Action, &c. 47. 11 H. 4. 64. Old B. of Entries. 5. New B. of Entries. 10. Or shall disturb my Customers that would come to my Fair, or Market, or my Mill. 11 H. 4. 45. 47. 41 Ed. 3. 24. 29 Ed. 3. 18. 9 H. 6. 45. F. N. B. 91. G.

About a Mill.

About the taking of Toll.

So for the disturbance of mee, or my Servant, in my taking of Toll in my Fair, or Market; it seems I may have this Action. 9 H. 6. 45. 21 H. 7. 16. Count. 18.

So against him that shall sell in another place out of the Fair, or Market. Regist. Orig. 107. A. B.

If the Bayliff of a Hundred, bee by prescription to have of every Brewer in the Hundred, as belonging to his Office, three gallons of the best Ale for seven pence, and hee be disturbed in it; it seems hee may have this Action. Trin. 19 R. 2. Action, &c. 51. See 48 Ed. 3. 17. 43 Ed. 3. 29.

About a School set up.

Sect. 9.

This Action will not lye for mee that hath a School in a Town, against him that shall set up another School by mee, albeit I suffer losse by it. 11 H. 4. 47. 22 H. 6. 14. 11 H. 6. 64. And albeit the first School to belong to a Corporation, which doth collate Scholars to it; yet no Action will lye for it, for it is Damnum sine injuria. Action, &c. 28.

If a School-Master keep School so neer to my Study, that any Lawyer, that hee doth disturb mee; no Action will lye for this. Mich. 8 Car. Curia.

About a Dove-house.

This Action will not lye for mee against another, that shall set up a new Pigeon, or Dove-house neer to mine that is antient, to the prejudice of mee in my Dove-house. Coo. 5. 104. And yet if any man but the Lord of a Manor shall erect a new Dove-house; this may be punishable in a Leete. Coo. 5. Rowlston's Case.

About an Office.

If I have an office of profit, and another disturb mee about it, that I cannot take the profit of it; I may have this Action in some cases for my Remedy herein. 6 Ed. 4. 9. Broo. 94. Coo. 9. 50. F. N. B. 94. Croo. 1. Jac. publisht. 548. Popham. Rep. 141.

About an Isle in a Church.

If I and my Ancestors, time out of mind, have had an Isle in a Church, for seats, and the burial of such as dye in my house, as appendant to my house, and the Parson, Vicar, or any stranger shall disturb mee therein; I may have this Action. New B. of Entries. 9.

Common and publick Nuisances.

But for common and publick Nuisances done in the publick waies, as by casting of garbage, dung, intrails of beasts, or the like filth, by digging of Pits within it, by turning of waters in it, or by not repairing of them, and the like: And for such things done therein, or in the common Rivers, in or neer any City, Burrow, or Town, the proper place to have the same redressed, is in the Law-day, Court, or in the Sessions, by presentment, or indictment, or some other way. And yet if by occasion of such a publick Nuisance, any one man hap to have any special damage above another man. As if by digging of a Pit, or laying of a block in the high way, hee or his horse is hurt; for this hee may have this Action. Croo. 1. 446.

446. Croo. 1. last publishr. 664. Stiles Rep. 335. Croo. 5. 103. Croo. 5. 72. 103. 9. 113.

See more. Popham. 166, 167, 168. Bulstr. 1. part 47. chap. 15. sect. 2. case 11. 20. chap. 15. sect. 6. case 29.

CHAP. VI.

Of an Action upon the Case for Deceit, and where an Action will lye for this, or not.

Deceit, what. Sect. 1.

THis Action upon the Case doth sometimes arise, and grow upon, in, or about some matter of deceit; and for this, these things are to be known, that deceit is said to be a Writ, which is sometimes Original, sometimes Judicial; and where it is Original, it is said to lye where any deceit is done by one man to another; and there it is said to be Judicial, where upon some Writ directed to the Sheriff, he shall make a false Return of it; as to the last of these it lyes, in these cases following, where a *Scire Facias*, or other Writ, issueth out of any Record against any man, and the Sheriff, or any other Officer returneth that upon it which is not true, then the party grieved shall have this Writ against him, and them that shall do this wrong; and in this Action there must always be deceit and damage both, for if either of them be wanting, no Action will lye, but if both bee in this case it will lye. Terms of the Law. A. 51. F.N.B. 95. And so it lyeth in the cases hereafter following.

Suits in Law.

Against an Attorney.

If a man make an Attorney in an Action real brought against him, and it is after by Covin agreed between the Defendant and the Attorney, that the Attorney shall make default, who doth so, and hereby the Tenant loseth his Land; in this case hee may have this Writ against the Attorney.

If a man bring an Action of Trespasse against two others, and the Plaintiff and Attorney by deceit, agreed between them, and cause two strangers, not party to the Suit, to come into the Court, and say, that they are the two Defendants named in the Writ; and that they appoint the same man to be their Attorney, in that Suit: And the Attorney, as Attorney to the true Defendant, plead no issue, and after suffer the issue to passe by his default, whereby the Plaintiff recovereth; in this case the true Defendants may have this Writ against the Attorney that appeared for them, and recover their damages. F. N. B. 95. Coo. 6. 9.

Against a Sheriff.

In a case where summons is necessary in an Action, and the Sheriff or Officer shall return it is done, wherein is not done, or make any other false return; this Action will lye for this deceit against the Sheriff, or other Officers, Summoners, by the Defendant in the Action.

Against a Councellor or an Attorney.

If my Councellor, or Attorney, or whom I trust in my Cause, shall discover the secrets thereof to my adversary in the cause, whereby I have damage; I may have this Action. 11 *H.* 6. 18. Action, &c. 108. But it will not lye against another man that may pretend to be a friend, &c. for this.

If my Councellor, or Attorney retained and trusted by mee in a cause, shall against, or besides his office, use any deceit, or do any thing against my truste in him, by which I shall suffer damage, I may have this Action against him. F.N.B. 95.

Against a Sheriff or other Officer.

If any Sheriff, or other Officer of any Court, that hath to do any thing there for mee, shall do it deceitfully, and falsly, whereby I have any special damage; I may have this Action against him. F.N.B. 95. Coo. 6. 9. 20 H. 6. 2. 15 H. 7. 14. Croo. 1. last publisht. 175. Dyer. 355. 11 H. 6. 18. Coo. 9. 32.

If a Sheriff, or any other such like Officer, or Minister of Justice, refuse to make a return of his Writ, as by Law he ought to do, or make a false return of his Writ, or the like, in any Suit of mine, by which I suffer any special damage; I may have this Action against him. Coo. upon Lit. 259. Coo. 6. 9. 9. 32. Dyer. 353. F. N. B. 97, 98. March. Rep. pl. 169. F.N.B. 95. But if a Judgement be had by my default, being all the while in prison, and I have been summoned according to Law; I can have no Action for this. Coo. upon Lit. 259.

Against another man.

The Principal having found Bail after Judgement against him, renders himself to prison in discharge of his Bail, the Defendant knowing this, doth maliciously procure a Capias ad satisfaciendum against the Bail, and thereby the Bail is imprisoned; he may have this Action against him. Judged, affirmed in Error. Croo. 1. 666. Jenk. Century. 8. case 22. After Judgement in Debt against B. upon a Capias Utlegatum against him, delivered to the Sheriff of Dale, in Com. Essex, and he shewed B. to him, and required him to execute the Writ upon B. yet he did it not, but returned a non est inventus to the Court of Common Pleas; the King and A. may have this Action against the Sheriff for this deceit. Croo. 1. 532. Jenk. Century. 8. 64. Judged, affirmed in Error.

Against a Mainpernor.

If one of the Mainpernors in a Suit in London, where there are two sufficient Mainpernors, shall fraudulently procure a Habeas Corpus out of the Exchequer, to remove the Cause out of the Court in London thither, and there procure and hire two beggerly fellows, whom he knows to be insufficient (by mis-information to the Court, that they were sufficient) for twenty shillings to be Bail there, and so to have the Mainpernors in London (who were by the custome to answer the Debt, if the principal fail) discharged of their Bail there, and the plaintiff in the first Suit get a Procedendo, and Judgement, and Execution: But the plaintiff is by this practice delayed and prejudiced, the Defendant being gone beyond Sea, &c. he may have this Action for his Remedy. Croo. 1. last publisht. 714

Against a counterfeit Executor.

If any shall as Executor or Administrator to another, to whom indeed he is no Executor, sue out a Statute, or defend a Suit, and therein do any thing to the prejudice of the true Executor; this Action lyes for the true Executor or Administrator against him. 2 R. 3. 8. F.N.B. 98. 9 Ed. 4. 13. 26. So if a Writ be brought against two as Executors, and one of them is no Executor, and he shall confesse the Action, the other that is damnified thereby, may have this Action against him: And so if such a Counterfeit Executor or Administrator shall get a Statute made to the Testator, and shew the Testament proved, or Letters of Administration, and so get out Writs, and hath Execution; so if he shall do it in the life time of the Promisee, and suppose him to be dead. 2 R. 3. 8.

For personating another.

If another shall come into the Court in my name, and as in my person, without my leave and privity, and there shall acknowledge a Judgement, enter into Bail, levy a Fine to the King, or appear for me there, and let Judgement go against mee, or sue another, that I have cause to sue, and let Judgement go against mee by Non-Suit, or do any thing in my name, without warrant from mee, and I have any damage by

by it; I may have this Action against him. F.N.B. 96. 97. 100. 19 H. 6. 44. March. Rep. pl. 76.

If one grant away a Rent Charge upon his Land, and then sell the Land to mee. 20 H. 6. 34. Or if one first sell his Land to another, and then sell it to mee; I may have this Action against him. 20 H. 6. 34. N.B. 9. 8. F.L.B. Intr. 689.

Deceit in Contracts. S.ct. 2.

If one pretend Right to Tithes, as a Parson, and sell them to mee, knowing hee hath no right, and by this I lose my money; I may have this Action against him, albeit there be no Warranty in that case for the same, nay Covenant for the quiet injoyment thereof. So if one shall sell Land to mee, and agree to make mee an estate thereof by a day, and hee before the day doth make it away, or some estate out of it, or put some charge upon it to another, and then make the estate to mee, I may have this Action for this deceit. 3 N. 7. 14. F.N.B. 98. 20 H. 6. 34. 21 H. 7. 12.

Sale of Deceitful things.

This Action in nature of deceit, lyeth where one sells a thing he hath no right nor propriety in: As if one pretends to be Parson of a place, and as such sell mee my Tithes, or another mans Tithes in the place, or sell Lands another hath right to, and the possession of; or a Horse another hath in his possession, without Covenant, Warranty, or Affirmance, that hee hath right or title to sell, no Action will lye for this: But if hee make any such Warranty at the time of the sale; this Action may lye. Croo. 2. 197. See 5 H. 7. 41. 9 H. 7. 21. Croo. 2. 1. 4. And yet there the case in 42. Ass. pl. 8. seemed to be agreed, where one took goods from another, and sold them; and the owner took them. See for this, chap. 15. sect. 3. case 10, 11. 15. 18.

For selling what which is none of his own.

With warranty.

If one sell mee a Horse, or other thing of another mans, as his own, and hee knows them to be the goods of another, and it be after taken from mee, or I be molested about them; I may have this Action, but otherwise it is if hee know it not, and therefore the declaration must say sciens, that they were the goods of a stranger, or it is not good. Croo. 2. last publishr. 44. Croo. 4. 18. 8. 42. Ass. 8. Croo. 2. 196. 197.

So if one sell mee Cattle, and affirm onely that they are his own Cattle, and they be not so, I may have this Action against him, and that before I am sued, or the Cattle took from mee. Croo. 2. 4. 1.

So if one shall sell mee a Horse, or other Cattle, and warrant them sound, and they be not so. Noys Rep. 124. Yelverton. Rep. 114. See chap. 15. sect. 3. case 1. 4. 5. 7. 9.

So of all cheating Contracts. Where one sells deceitful wares, or other things, or by deceitful measures, or use any other deceit with warranty, or without warranty; As where one doth sell mee good, and deliver mee bad. Dyer. 75. sell mee unwholesome Bread, Beer, Wine, Meat, Raisons, Apothecaries Drugges, or any thing that greatly hurts the body, and may hurt it, knowing it to be so. 19 H. 6. 53. 22 H. 7. 41. N.B. 88. 5. that sells mee Wine mixed with Water, a Horse not sound, knowing it. 20 H. 6. 34. 15 H. 4. 1. 3 H. 7. 4. 19 H. 6. 53. 7 H. 4. 15. 11 Ed. 4. 6. 42. Ass. pl. 8. That sells mee bad Cloth, knowing it. 22 H. 7. 9. That doth promise mee for my money to deliver mee that which is good Gum, and doth not. Mich. 7 Jac. R. Weston and Digbie. And if there be a warranty in the Case, then is the Action more undoubtedly maintainable. N. B. 94. J. 9. N. 6. 5. 5. Croo. 2. 196, 197. See more, chap. 4.

With warranty.

Sale of corrupt Victuals.

And for deceit in sale of corrupt victuals, it is held, this Action will lye, albeit there be no warranty in the case. Kelw. 91. 8. 11 Ed. 4. 6. 7. But it is held by some Books otherwise: For this was sophisticated meat. Dyer. 75.

75. 76. Yet see Kelw. 89. 7 H. 4. 10. 13 H. 4. 2. 9 H. 6. 50. 11 H. 6. 22. 19 H. 6. 49. F. N. B. 88. Croo. 2. 196, 197.

So it is held, if one sell me a Horse unsound, and I knew him to be so, without warranty, I may not have this Action for this. F. N. B. 94. Action, &c. pl. ult. See Siles Rep. 310.

So if I buy corrupt Wine, or victuals, and I, or my Servant taste it before hand, and accept of it, that in this case I can have no Action. 7 H. 4. 16. 13 H. 4. 2. Bridgman. Rep. 127, 128.

Deceit by a Tradesman in his Trade.

If one sell me a Sapphire for a Diamond, in his Trade, as a Goldsmith, &c. it hath been said, this Action will lye for this deceit, without any warranty in this case. Kitch. 174. and yet it is said in Croo. 2. part. to be adjudged, that if a Goldsmith sell me a Stone, and say it is a Bezar Stone, but doth not warrant it to be so; that no Action will lye for this. See for this, chap. 13, sect. 3. case 5.

With Warranty.

If a man sell me any living, or dead thing, as Cattle, Cloth, or the like, and at the time of the sale he doth warrant it to me good and right; or if it be Cloth, that it be of such a length, or the like, and it is not so, I may have this Action against him; and this, albeit I have not paid all my money for the thing bought, and albeit the warranty was made to a nother to my use, so it be made at the same time. Kelw. 89. 9 H. 7. 22. 5 H. 7. 41. F. N. B. 94. 98. Old N. B. 50. 12 Ed. 4. 2. See chap. 4.

If one sell me a Horse, and warrant him sound, and he hath at the time of sale and warranty, Spavins, or Splints, or other visible infirmities, which the buyer may see if he will; it is said this Action will not lye for this. Croo. Rep. 2. 631. So if I sell Purple to one, and say it is Scarlet. Bulst. 3. 94. One sold false Bills of Publick Faith, and affirmed them, affirming them to be true, and for this had an Action, and it was allowed. Siles Rep. 343, 344.

If one be in sale of a Lease to me, and to advance his price, tell me that I. S. did bid him a hundred pound for it, to which I giving credit, buy it, and give him a hundred pound for it; but I. S. did never bid him a hundred pound for it; yet for this I may not have this Action against him. Adjudged. B. R. 41 Eliz. Taylor's Case.

If one sell me two Oxen, and warrant one of them sound, and I in my Action prefer a Warranty of them both, and the Jury finde for me only, yet I shall recover damages for this deceit. Croo. 2. last quod libr. 885. 2.

If one sell me a Horse, and doth not warrant him, although he be not found, no Action will lye against him for this; But if he warrant him found to me, and it be not so, I may have this Action. Bulst. 3. 95.

Against an Officer imbezelling of Records.

This Action will lye against a Sheriff, or his Deputy, or an Attorney, for the imbezelling of a Record; but not against a Sheriff for the imbezelling of his Deputy: And it will lye against the Custos Brevium for imbezellings. Writ delivered to him. 19 H. 6. 30. 7 H. 4. 16. 8 H. 8. 8. Bro. 88.

If a Summons be returned in a Formedon, where it is not made, or if the Defendant upon an Execution, render himself, and hath a Supersedeas, and yet the Sheriff will retain him; he may have this Action against him, or sue him in the Exchequer. 26. Ass. pl. 48. Bro. 12. 52. Ed. 3. Error. 77.

Deceit of an Officer. Sect. 3.

So if an Escheator make a Return of an Office, where none is found, or make a false Return of one found. 9 H. 6. 60. Action upon the Case. 6. 21 Ed. 4. 21. See the Office found virtute brevis, or virtute officii. 14 H. 7. 10.

Forgery and counterfeiting of deeds, &c.

If one forge a Statute Staple in my name, and it be made also against

gainst me, by which I am hurt; I may have this Action against him. Fitzhard. F. 9. 6. B. 5 Ed. 4. 126. But for forging of it onely; If it be not given in evidence, or made use of against me; no Action will lye. F.N.B. 99 R. 5 Ed. 4. 116. 126.

If my Servant counterfeit a Letter in my name to A. B. that hee would send mee twenty pounds upon the delivery whereof to A. B. hee delivereth the twenty pound to my Servant; A. B. may have this Action against him. 33 H. 8. Pasch. 7 Jac. B. R. Tracy versus Veale, alias Smith. Adjudged. Against a Servant. For counterfeiting of a Letter.

If a Servant of mine have money of mine in his hands, and a stranger procure a counterfeit Letter to him from me, to pay this money to him upon a pretended Debt I should owe, and by this deceit get the money; I may have this Action against him for this. Croo. 2. 223. See chap. 15. sect. 3. case 2.

If A. be excommunicated, and sent to B. the Parson of the Town to pronounce, and he put out A. and put in B. and read it in the Church, by which B. is molested; hee may have this Action. Croo. 2. part last published. 838. By an Officer.

If a Tenant in antient Demesne Levy a Fine of his Land at Common Law; it seems the Lord may have this Action against him. Plow. 370. F.N.B. 98. 99. Tenants in antient Demesne.

If my Servant buy Goods or Cattle for mee of another man, for a summe of money, part in hand, and the rest to be paid at a day to come, and dye, and the Seller after my Servants death doth demand of mee the money to be paid at the day to come, affirming that it was not paid, and I giving credit to his saying, pay it again; I may have this Action for this Deceipt against the Seller, and yet perhaps I may also have an Action of Account, if I please. Croo. 2. 100. Contract of a Servant.

If one that hath a Factor in Barbary have these Jewels that are counterfeit, and knowing mee to be there, hee acquaints his Factor therewith, and commaunds him to conceal the counterfeiting thereof, and directs him to meet being there, and the Factor comes to mee, and intreats mee to sell these Jewels for him, telling mee they were good Jewels, and thereupon, I, not knowing of the deceit, sell them, being worth not above a hundred pound, to the King of Barbary, for eight hundred pound, by which I am imprisoned, and troubled there, till I repay the eight hundred pound to the King; it seems that this Action will not lye for this deceit. Croo. 2. 469. Bridgman, 126, 127. See the case, chap. 15. sect. 3. case 5. Sale of deceitful wares. Counterfeit Jewels.

If one Clothier's Cloth be very good, and much in request by his mark, so that in London the same is bought by sight of the mark, without more to do; and another Clothier very like the mark upon his Cloth, without the Clothiers privity, whose mark it is, by which the buyer is deceived; he may have this Action against him that doth counterfeit the mark. Croo. 2. 471. See it, chap. 15. sect. 5. case 5. Clothier in sale of Cloth.

If one command his Servant to sell an ill Horse, and the Servant sell him for a good one, whereby hee is molested and troubled; yet he may not have this Action against his Master. Croo. 2. 471. By Just. Haughton. Master and Servant.

If a Goldsmith make plate, wherein hee mingles brasse, so that it is not according to the Standards, and sends his Servants to a Fair to sell it, who sells it for good plate according to the Standards; in this case it seems an Action of the Case will lye against the Master for this deceit. Croo. 2. 470. 471. See more for this, chap. 4.

If

Deceit in Games. Sect. 4.

If any man play with mee with false Dice, or false Cards, and thereby cheat mee of my money; I may have this Action against him. N. B. 95. D. Regist. Orig. 240. No. Lib. Intr. 8. sect. 8. Croo. 1. 87. Croo. 1. Eliz. publisht. 90.

About a sale of Land.

If one have a Term of years of Land to sell, and I am buying it, and I. S. affirm to mee, that it is worth a hundred and fifty pound to be sold, and thereupon I give so much, but it is not worth it, nor will yield it; this is no such deceit, as I may have this Action for it: But if the seller shall warrant it to the buyer, to be of such a value when hee sells it; there perhaps it may be actionable. Yelverton. 20.

By mis-report.

If I put a Carriage to a Carrier, and the things to be carried are before him, that hee may see and know what it is; and I tell him the weight thereof is but so much, and it fall out to bee much more, and the Carrier relying upon my word, doth not weigh it, but doth put his Cattle to it, and thereby over-draw them, and hurt them; yet no Action will lye against mee for this. Bulstr. 3. part 95. 9 Ed. 4. 3. 4. But if one shall lend his Cart and Horses to another, and hee over-load the Cart, and by this hurt any of his Horses; for this the party grieved may have this Action. By Crook Just. Bulstr. 3. 94, 95. So if I say, send your Cart to mee to carry Wood, and I will give you so much a load, and trust mee with it; in this case if I over-load and hurt his Cattle, hee may have this Action: And yet if the owner, or Carrier be present whiles this over-loading is, and doth direct and order the business, no Action will lye for it. Bulstr. 3. part 94. See chap. 15. sect. 3. case 1. 16.

For a Carrier.

Upon delivery of goods.

If one be buying of a Lease, and I tell him it is more worth than it is; no Action will lye against mee for this mis-information. chap. 15. sect. 3. case 3. out of Yelverton, Rep. 20.

One trusted to buy for mee, buyes for himself.

If I retaine one to buy Land for mee, and hee buy it for himself; I may have this Action. 16 H. 6. Action, &c. 44. 3 H. 7. 14. 17. But if he be retained to buy Land for mee of I. S. and I. S. dye, hee is discharged, and may now purchase it to himself. 3 H. 4. 14. Action, &c. 20. 20 H. 6. 37. 3 H. 7. 14. 17. But if hee do his indeavour to do it whiles I. S. is alive, no Action will lye against him. 11 H. 6. 18.

If I appoint my Attorney to take an Obligation for mee, and hee take it in his own name for himself, or to buy a Lease for mee, and hee buy it for himself, I may have this Action against him. 20 H. 6. 4. 25. 3 H. 7. 14. Broo. 117.

If my Servant, trusted to do work for mee, do it deceitfully, by which I have damage; as if I be a Merchant, and appoint him to pay Customs for mee, and he do it not, but put it into his own purse; this Action lyeth. Lanes Rep. 68. Croo. 2. 265. See chap. 15. sect. 3. case 6.

Vexatious Suit.

If I enter into a Statute to pay money by a day, and pay it, and after a stranger get the Statute, and sue mee in the Counties name, without his leave; I may have this Action against him: So if any man shall sue mee in anothers name, without his privity. F. N. B. 96. 97. 100. Fitz. Action, &c. 3.

By underselling of my goods.

If one be indebted to mee two hundred pound, and delivereth mee two hundred pounds worth of goods to sell, and pay my debt, and I am proffered two hundred pound for the goods, and refuse it; but afterwards I sell them for a hundred pound: in this case hee hath no remedy against mee: But if there be any fraud in the sale, that it is so sold by mee, to deceive him; hee may have remedy against mee in Equity. 18 Ed. 4. 5.

By sale of false Bills of Publick Faith.

An Action was brought for selling to the Plaintiff false Bills of Publick Faith, and was maintainable. Adjudged. Stiles Rep. 343. See chap. 15. sect. 3. case 12.

An

An Action was brought against a man for bringing in a false note of Goods, for which Excise was to be paid, by which a special damage came to the Plaintiff. Adjudged. Stiles Rep. 368, 369. See it, chap. 15. sect. 3. case 13. By giving in a false note of Excise.

If one shall deceitfully prosecute mee in an Action for a Debt, that hee knows is paid; this Action will lye. Croo. 1. last publisht. 795. See the case, chap. 15. sect. 3. case 8.

This Action will lye also for deceit in an Officer about the Execution of his Office. But see for this, chap. 10.

CHAP. VII.

Of an Action upon the Case for a breach of Trust, and where it will lye for this, or not.

Sect. 1.

This Action doth sometimes arise, and grow, by, upon, or about some thing wherein is a breach of Trust, or Confidence; for the opening whereof, take these following Cases.

In Trin. 7. Jac. in the Exchequer, it was said by the Chief Baron Tanfield, that if my special Servant, as my Steward, Bayliff, or the like, mis-demean himself in such a thing as belongs to his charge; I may have this Action against him, albeit there be no special trust in the Case: But if hee be but a general Servant, and there be no special trust in the Case, so hee is to execute all my lawful commands, and if hee do not, I may have this Action against him, and yet if the thing commanded have not a convenience in it: As if I command him to pay a hundred pound at York, and do not provide him a Horse, or give him money to hire him a Horse, I may not sue him for not doing of this: And if such a general Servant shall do another thing, that I have not commanded, and I receive damage thereby, as if hee be onely a general Servant, and not my Horse-keeper, take my Horse out of my Pasture, and ride him; in this he is as a stranger to mee, and I may have my Action against him: But it may be a question whether I may have this Action, or a Trespasse: And yet if such a Servant shall without my appointment ride my Horse, so as it dye by the riding; there perhaps I may have this Action. See Lanes Rep. 68. Croo. 2. 266. chap. 2. sect. 7. Against a Steward, Bayliff, or other Servant, for the Master. Horse-man. Trespasse.

If my Bayliff, or other Servant, that hath the keeping of my Cattle, shall kill them, or sell them, or lend them to another that shall kill them; or if having the over-sight of my grounds, hee shall without warrant from mee, cut down my Trees, or make other waste therein; I may not have this, but some other Action against him. 18 Ed. 4. 20. 27. Broo 99. Croo. 1. part last publisht. 777. 778. 12 Ed. 4. 13. And yet perhaps for some of these wrongs this Action lyes. Bayliff.

If my Shepherd shall suffer my Sheep to be drowned, or to turn shabby by his negligence, I may have this Action. Dyer. 121. 2 H. 7. 11. Coo. 5. 13. But if hee kill or sell them, some other Action. Croo. 1. last publisht. 777. 784. Shepherd.

If my Plow-man shall suffer my Plow-Cattle to be spoiled for want of looking to, or drive my Plow so hard as to hurt my Cattle, or the like, I may have this Action against him. 7 H. 4. 14. Coo. 5. 13. Broo. 99. Plowman.

If my Butler shall break my Hamper, or the like, I may have this Action against him. 18 Ed. 4. 27. Butler.

If

If my Servant, that hath charge of my Cloth, suffer it to be consumed with moths, 27 H. 8. 25. Broo. Action, &c. 103. Regist. 107. A.

Horse man. So if hee have the charge of my Horse, and suffer it to dye by his neglect. 12 Ed. 4. 13. Broo. Action, &c. 103. So if hee hath the charge of my Release, Bor, or other goods, and lose it. 34 H. 6. 4. Lib. Intr. 9. A.

Between Merchants. If I be a Merchant, and going beyond Sea to Merchandize, do appoint and trust B. my servant to receive for mee all such goods as I shall send and convey over, and to pay the Custome for them, and to dispose of them for my profit, and I send over goods consigned by mee to him, and hee of purpose to deceive mee, and to have allowance of it upon his Account, and to deceive the King, doth land some of my goods, not paying the Custome, by which they are forfeit; in this Case I may have this Action against him for this deceit. Lanes Rep. 65. Adjudged. Croo. 2. 266.

Servant trusted. It will lye for mee against my Bayliff or Servant, that I trust to pay mony for mee to another, that doth it not, by which I suffer damage. 20 H. 6. 9. As if it be on an Obligation, the which by the non-payment is forfeited. 20 H. 7. 4.

Servant trusted. So if my Servant retained and intrusted by mee, shall either not do, or refuse to do the work of his place, or not to do it well; this Action lyeth against him. 14 H. 6. 18. Action, &c. 8. 3 H. 6. 36. And if I have a Covenant from him to do it, yet for the doing it amisse, I may have this Action. 20 H. 6. 36.

Servant trusted. If my Servant be sent by mee to one that doth owe mee mony, and hee pay it to him, this doth discharge him, and binde mee, and therefore I must have my Remedy against my Servant, if hee answer it not to mee, and this perhaps by this Action: so if hee shall go without sending, or with a counterfeit Letter, or a Message, and the party deliver him the mony; albeit this will not binde mee, nor discharge him, yet if the mony come to my use, and I agree to it, this will binde mee, and discharge him: But if I suffer any thing hereby, that I do not agree unto, I may perhaps have remedy by this Action. Doct. and Stud. 138.

Sect. 2. If I make a man my general Receiver, and hee receiveth mony of a Servant trusted. Debtor of mine, who am his Master, and maketh him an acquittance, but doth not pay the mony to mee; this payment will binde mee, and discharge him, but if hee make him an acquittance, and not receive the mony, this will not binde mee, nor acquit him: So if hee take a Horse by agreement for the Debt; this will not binde mee: And yet if I by writing make another my Receiver, and give him power to make acquittances, and he make acquittances of Debts not received; this will binde mee, and acquit him, if my Receiver exceed his power; and after I agree to it, this is a good Barre; but if hee any way break his trust, and prejudice mee, in these Cases I may perhaps have my Remedy by this Action. Doct. and Stud. 138. 131. Noys Rep. 111.

What Act of his shall binde the Master.

Equity. Feoffee of Land in Trust. If my Feoffee in trust refuse to perform his trust, I may not have this Action against him, but I must bee relieved in Equity against him. Bulstr. 2. part 337.

Carrier. If a Carrier take my goods to carry, and wilfully marre them, or negligently lose them, or suffer them to be lost or spoiled; I may have this Action. Hobb. Rep. 106. Noys Rep. 114. If I deliver my Pots, Glasses, or other goods to a Carrier to carry for mee, and hee breaks, spoils, or loseth them, or suffer them to be so by his negligence; I may have this Action against him. 2 H. 7. 2, 11. Lib. Intr. 2. D. as where hee over-loadeth a Horse, and it fall into the water, or drives by night, or out

out of the way, and is robbed: And albeit they are delivered to his Servant, yet this (especially) if it be his common and known Servant, and one that useth to take in goods for him to carry; this will make the Master chargeable. Pasche 9 Jac. B. R. Wornhall and Bradshaw. And yet it is held, that if one that is not a common Carrier undertake the carriage of any thing for mee, and no wages is promised to him for it, that this is not actionable, it is but Nudum Pactum. 3 H. 6. 36. Regist. 110. 112. See chap. 12. And yet if hee be a Carrier that is newly set up, or hee carry for some persons onely (if hee carry for mony) it is actionable: But a Carrier, by a special agreement, as when hee undertakes the Carriage with this caution, not to answer them if they be lost; hee shall not be chargeable; so if there be no default in him in the Carriage, and the damage happen by the Act of God; in this case, unlesse there be some special Assumpsit, and good Consideration to ingage him in the Case, it seems hee is not to bee charged. Doct. and Stud. 38. 139. Fitz. 14, 15.

If I lend my Plate, or other goods, to one that shall waste or mis-use them, or convert them to his own use; I may have this Action. 27 H. 8. 25. Dyer. 22. 2 H. 7. 11. 20 H. 7. 4. 2 Ed. 4, 5. 18 Ed. 4. 23. 21 Ed. 4. 19. About goods lent or delivered.

If I deliver one my goods to keep, and hee lose or hurt them; I shall have remedy by this Action. Coo. 5. 14. 2 H. 7. 1. Against one trusted with goods. Sect. 3.

If I deliver goods to A. to keep for mee, and hee deliver my goods to C. to my use, and C. spoil them; I may have this Action against C. 12 Ed. 4. 13. Pl. 9. Action &c. 19.

If I deliver a bagge sealed, and twenty pound in it to one, and hee breaks the seal off it; I may have this Action. 21 Ed. 4. 30. Pl. 25. yet see. 20 H. 7. 4. Action was brought for breaking of a Chest, or Box, with mony delivered to him, to re-deliver, or to deliver over, and that it was broken by the Defendant, and the mony converted to his own use, and it was said, it was sufficient to traverse the conversion to his own use.

If I deliver goods to one to deliver over to another, and hee shall not deliver them over accordingly, but break his trust, and convert them to his own use; hee doth by this make himself liable to my Action, and to the Action of him to whom they are to be delivered, and either of us may have our Action against him; and albeit he to whom the goods are to be delivered over, have not the possession of them, yet hee may have this Action for the Non-feasance, and breach of trust; and if it be mony that is so delivered to deliver over, hee is a Debtor of the mony, or accountable at my pleasure. Bulstr. 1. 68. Dyer. 20, 21.

If I deliver mony to one to give to my Attorney that follows my Cause, and hee deliver it to my adversary; I may have this Action against him. 20 H. 7. 9. Attorney.

If I retain a man to purchase Land for mee, and hee doth it not; this Action lyeth not, if hee doth his endeavour, but if hee purchaseth it for himself, I may have this Action. 11 H. 6. 18. 3 H. 7. 14. 17. A man trusted to buy Land for mee.

If I trust one to buy a Lease, or take an Obligation to mee in my name, and hee buy the Lease for himself, or take the Obligation in his own name: I may have this Action for this. 10 H. 6. 4. 25. 3 H. 7. 14. Broo. 117.

If one convey his Land to I. S. to the intent that I. S. shall convey it to I. D. to whom the Feoffer had sold it, and I. S. refuse to convey it to him, and doth sell it to another; in this Case the first owner of the

Land may have this Action for the breach of Trust. Hughes Rep. 64.

If I retain and trust a Man to buy Land for mee, and hee buyes it for himself; I may have this Action: But if hee be to buy Lands of I. S. and I. S. dye, then is hee discharge of it, and hee may afterwards buy it for himself. 3 H. 4. 14. Action, &c. 20. 20 H. 6. 27. 16 H. 6. Action, &c. 44. And if hee do his endeavour, in such a case where hee is retained, hee is excusable.

Councellor Discover my Case.

If I for money retain a man to be of my Council for the purchase of such Lands for mee, and hee take upon him to do it, and discover my Council, and by this help another to the Land, I may have this Action. 11 H. 6. 18. Action, &c. 7.

If my Councellor shall not give in evidence that which I shall informe him, and is pertinent to my Case; I may have this Action against him, by Popham. Coo. 2. 96.

For abuse of a protection.

This Action will lye for mee against one that hath gotten a Protection of the King for mee, and gives it to another of the same name. 30 H. 8. 18.

Ferry-man.

This Action lyeth against a Ferry-man that surchargeth his Boat, by which my Horse is drowned. 22 Ass. 41. Or the Passengers are like to be drowned, but if the danger accrew onely by the Act of God, as by Tempest, or the like, without any defaulte of the Ferry-man; no Action will lye for this. Coo. 12. 63.

Farrier, or Smith.

If a Farrier undertake the cure of my Horse, or a Smith the shoeing of my Horse, and doth it not well; this Action will lye. 19 H. 6. 49. 46 Ed. 3. 2, 3. See chap. 12. for this.

About a Suit in Law.

Who may sue.

If I retain an Attorney, and Clerk of the Kings Bench to follow a Suit for mee there upon a Bond, and give him my Bond, and take order to sue him to Judgement, and hee neglects it, and doth nothing in it, but gives my Bond to the Obliger, to be cancelled; I may have this Action against him. And if there be two Obligees, and one of them bring the Action alone, hee shall recover, and if the other sue afterwards, the Defendant may plead this Recovery in Barre. Adjudged. Tauton and Harris. 1 Car. 1. B. R. Latch. Rep. 124.

Recovery in one, a barre in another Action.

Sect. 4. Against an Inne-keeper for losing my goods out of his Inne.

If an Inne-keeper refuse to lodge mee, or herbage my Horse, when he hath room in his house, and may do it; I may have this Action against him, and the Constable of the Town may, if hee will, compel him to receive mee, unless hee can give good reason for his refusal, as that his house is full, or that I have the Plague, or the like. 14 H. 7. 22. Kelw. 56. Dyer. 148. 5 Ed. 4. 2.

But it seems hee may refuse and justifie the refusal to receive the Horse or Goods of any man that will not lye there himself. Pasche. 7 Jac. B. R. Walbrook's Case.

And if I lose any thing out of an Inne, or Common Hostry, whether Goods, Cattle, or Evidences; I may have this Action for my relief against the Inne-keeper, or Hostler; and this will lye, albeit the Inne-keeper bee at first refuse mee, and the goods lost were never delivered to the Host, or hee never charged with them; and albeit his house be full of Guests, and I keep the Key of my Chamber my self; and although I leave open my Chamber door my self, or be robbed by my Chamber-fellow, if he be one the Inne-keeper placed with mee. Coo. 8. 32. F. N. B. 95. Dyer. 58. Regist. Orig. 104. 11 H. 4. 45. 2 H. 6. 35. But in all cases where this Action is maintainable, these things must be in the Case,

1. The goods must be lost, and lost out of a Common Inne, and so the Count must set forth, but not the Court, and an Inne in London is within this Law. Popham. 178.

2. The

2. The person to be charged must be a Common Host, or Inne-keeper, such a one as doth receive such guests: for if one leave his Horse with one that is no Common Inn-holder, and he be lost, he shall not answer it; and yet if hee have but newly set up the Trade, he is chargeable. Coo. 8. 32. Dyer. 158. 166. Popham. 179.

3. The party that loseth the goods must make it appear, that the goods were brought into the Inne, or House.

4. They must be lost in his passage and travel through the Country, transeundo per Patriam. Coo. 8. 32. Bendloe. 173.

5. The goods must be the goods of him that lodgeth there as a Guest, and not of one that is a neighbour, or friend: And a man shall be accounted a Guest (as it seems) untill hee hath been there three daies, and not after. And therefore it is said, by Dodridge Justice, that if a Passenger lodge three daies in an Inne together, the Hostler shall not be answerable for his goods, if they be stoln out of the Chamber. Latch. Rep. 88. Gulielms Case. Or they must be the goods of his Master that is such a Guest; and in that Action the Master or Servant, either of them may have this Action against the Inne-keeper. Popham's Rep. 179. Bendloe's Rep. 173. But it is not needful to shew that he was in his journey transient, and travelling. It is good enough to say hee lay there onely. Noy's Rep. 79. Latch. Rep. 126, 127.

If a man come in, in the morning, and his goods be taken away before night: hee shall have this Action. Popham. 179. And if hee belong as a Guest to the House, albeit hee doth not lodge there, yet the remedy is given him, as if hee lose his Horse, and he not lodge there, or before night; hee shall have this Action. And albeit he be at the end of his journey, as a Clothier, or Tanner in London, yet he shall be accounted such a Guest: But if he board, or sojourn in an Inne onely, or have a quarter of a year there, he will not be accounted a Guest capable of this Action. Popham. 179. Hetley. 49. Yelverton. 162. Bendloe's. 19. Dyer. 158. Latch. Rep. 126, 127.

6. The thing lost must be gone out of the Inne, the House, or the Stable, for he is not bound to keep them elsewhere; and therefore if the owner bid the Hostler put his Horse to grass, and he be lost, the owner must bear it: But if the Host of his own head, put him out to grass, without the owners consent, the Host must bear it. Coo. 8. 32.

7. It must be lost by the negligence of the Host, or his Servants, as in the cases before, as where the Guests Horse is put to grass without his privity, &c. For if a Horse dye in the Stable, without any default of the Host, or his man, the Host is not to be charged. Pasche. 12 Jac. Co. B. Wisiciere's Case. So if the Guest be robbed by his own Man, or Chamber-fellow of his own chusing; no Action will lye against the Host for this: it must therefore be shewn, that the goods came to his hands. Coo. 8. 32. 22 H. 2. 22. 38.

8. The party that doth lose the goods, must be a guest of the House; and a stranger or traveller at the time of the loss; for if he be but a friend invited by the Inne-keeper to lodge there all night, or a neighbour that dwells neer the place; this Action will not lye for him. Pasche. 7 Jac. B. R. Walbrook's Case. Bendloe's Rep. 173.

9. The goods must be lost while the owner is there: For if one leave his dead goods with the Inne-holder, and do not lye there himself, and the goods are stoln, the Host shall not answer them. Bendloe. 173. Yet if it be a Horse, or living thing which is left, by which the Inne-keeper doth gain, he shall answer for it: But if a man leave other goods, as Hats, or the

the like, and the Host say, he will keep them safe, and the Guest doth not come in many daies, and they be lost, the Host shall not be chargeable: And yet if the Guest go out in the morning, and come again at night, the Host will be chargeable for what of his goods shall be lost. Adjudged. Coo. 8. 32. So perhaps where he goeth away and stayeth longer; if the Inne-keeper make any special promise to keep the Goods safe, an Action may lye. Brownl. 1. part 254. Croo. 2. part 189. Noy's Rep. 126. One leaves his goods in an Inne where hee lay, and saith he will return within two or three daies, and he goeth his way, and returneth, and the goods be stolen; no Action will lye: But otherwise if hee say he will return at night, and they be stolen before night. See a president, that he is to keep all the goods that are left with him, ita quod damnum non eveniat hospitibus nec aliquibus alijs, &c. Coo. lib. Entries, 341. Latch. Rep. 127.

10. There must be an agreement by the Host to entertain the Guest, or a shifting excuse to put him off: And therefore if the Host tell him his House is full of Guests, that he cannot admit him, and the Guest saith, he will make a shift amongst them, and is robbed; the Host shall not be charged: But if the cause of the refusal be false, the Guest may have this Action for the refusal. Dyer. 158.

So if a Guest that comes into an Inne with Horse and Packs, be told at his coming, there is no room for him, and they cannot lodge him, and yet will not depart, but stays with his Horse and Packs, and without leave or acquaintance of the Host, or any of his Servants, takes his bed with some of the Guests there, and so lose his Horse or Goods; in this Case the Hostler or Inne-holder shall not answer them.

But if an Inne-holder shall say to a Guest, when hee comes in, put your Goods in such a place under lock, and I will warrant them, otherwise not, and the Guest suffer them to lye in an outer Court, and there they be lost; the Inne-holder shall not be charged. Dyer. 266.

But it will not excuse the Host to say,

1. That his Guest did not acquaint him with his goods what they were. 22 Ed. 3. 18. 1.

2. That he delivered the Key of the Chamber to the Guest himself.

3. That he knew not the Felons. 22 H. 6. 38. A.

4. That he said his House was full, and did refuse them, and the Guest said he would make a shift, unless it be true, and then it will. Dyer. 150. Kelw. 50. A. 14 H. 7. 13.

But to say, he did bid his Guests to put their goods in such a place, under lock and key, else he would not warrant them, and they would not, but put them in the open Court: this will excuse him. Dyer. 266. pl. 9.

5. That the Inne-keeper, when the Guest came to his house, was sick, and by occasion thereof de non sane memory. Croo. 1. last publish. 622.

Lastly, An Inne-keeper is not accountable for any wrong done to the person of his Guest. Coo. 8. 33.

In this Action the Court is general, but the Count is special. Coo. 8. 33. See Siles Rep. 370. chap. 15. sect. 6. case. 2.

CHAP.

CHAP. VIII.

Of an Action upon the Case for a Trover and Conversion, and where it will lye for this, or not.

SOme of these Actions do arise, and grow by, in, or about the finding, delivery, and conversion of Goods, for which take these things.

Trover and Conversion is a kind of Action upon the Case, which a man hath against another, that having gotten any of his goods, doth refuse to deliver them upon demand. What it is.

This same divide thus: In Deed, where the Goods are either delivered over to persons unknown, or sold, knowing them to be the Plaintiffs Goods, or sold as to persons unknown. 33 H. 8. Broo. Action upon the Case. 109. Dyer. 308. Pl. 66. Or in Law, where the goods are wasted. 34 H. 8. Broo. Action upon the Case. 103. And where they be demanded, and hee that hath them, doth deny, or refuse to deliver them. Coo. 10. 46. 33 H. 6. 27. And this is in its nature but a special Action upon the Case, to recover damages. Mich. 22. Car. 1. B. R. Stiles Regist. 6. And it hath been held, that where one may have a Detinue, he may have this Action, or that Action at his election. 22 Car. 1. B. R. Stiles Regist. 6. Quotuplex. Sect. 1.

It will lye for the Husband and Wife, for a Deed, by which an Annuity was granted to the Wife; for this the Wife is to have if she survive the Husband. Trin. 40. Eliz. C. B. Russell and Carey. But for the Goods of the Wife, dum ipsa sola fuit. Stiles Rep. 261. In what case it will lye, or not. 1. For the persons that sue, and are sued, and in what name it must be

If it be brought for Corn upon a Lunaticks Land, it must be brought in the Lunaticks name. Hobb. 215.

If my Lessee for years, or life, suffer a stranger to cut down an Oak upon my Land, and carry away the bark of it, or the Tree; I may have this Action against the stranger for this. Croo. 1. part 176.

It will lye against any man that hath had my goods, and converted them; as if it be a hogle, and sold by twenty men, I may bring the Action against either of them. And it will lye against any one that hath the possession of my goods, although it be but by borrowing onely, by Baron Henden. 17 Car. 1. at Glouc. Assizes.

If A. take goods to the use of B. and B. do after agree to it; in this case it is doubted whether this Action will lye against B. because A. by his taking hath diverted the property of them.

It will not lye against Husband and Wife upon a supposed conversion by them both to their uses, but it must be against the Husband alone. Croo. 2. 661. Croo. 1. 355. Yet see Leonards Rep. 312. But it will lye against Husband and Wife upon the Conversion of the Wife during the Coverture: And so also for a Trover and Conversion, dum sola fuit. Croo. 1. last publishe. 842. Noys Rep. 79. Brownl. and Goldsb. 3. But care must be had in drawing the declaration. Stiles Rep. 48. 126. Bulstr. 3. 150.

It will lye for an Executor or Administrator, upon a Trover and Conversion, and for a Conversion in the life time of the Testator. Croo. 1. 159. and 1. last publishe. 377.

It will lye for an Administrator for the goods taken by one before the Letters of Administration granted him. Stiles Rep. 341. 761.

If the Waiter deliver Corn to his Servant to sell, and he make money of it, his money being received, is the Waiters, and he perhaps may

have

have this Action for it. Mich. 40. 41 Eliz. B. R. Holliday and Hicks. See chap. 15. sect. 4. case 3.

2. For the thing sued for. Sect. 2.

He that brings this Action, must bring it for such things, and declare for them in such words, as the Law doth prescribe: And for this we are to know,

That this Action will lye for mony at large out of a Bagg or Chest, or in a Bagg or Chest, or for so many peces of gold, of twenty shillings a pece, or for so many peces of silver in certain, or for ten pound in mony, but not for mony found, if it be not in a Bagg. Croo. 1. last publisht. 638. 661. 818. 819. 841. Croo. 1. 63.

And it will lye for any other goods Animate, as Oxen, Horses, Sheep, Hens, and the like, or Inanimate, as Jewels, Rings, Carpets, Chairs, Stools, and the like. Croo. 1. 63. Trin. 43. Eliz. C. B. Hall and Wood. Pasche. 34 Eliz. In the Exchequer. But if it be for mony out of a purse, it will be good to set it forth, specially that he lost it, and the other found it. Croo. 1. last publisht. 568.

It will lye for Wood or Trees cut down and severed from the Land, as for a hundred loads of Wood, and forty Beeches. No. Lib. Intr. 21. B. sect. 33. Croo. 1. last publisht. 819. But it will not lye for Wood growing. Mich. 40 Jac. B. R. Nor for any thing that is a part of the Free-hold, as Lead upon a house, or the like, till it be severed from the Free-hold. It will lye for the bark of a Tree. Croo. 1. 176.

It will lye for fifty pound of Wool, ad valentiam, &c. and pondus shall be taken for a pound weight. Mich. 9 Jac. B. R. Rook and Lloyd.

It will lye for a Bond, or other Writtings. Croo. 1. 192.

It will lye for a chaine of gold found and sold. Dyer. 188. Pl. 14. For Hoops. Croo. 1. 370. For a Trunk full of Linnen, Bands, Cuffs, &c. Croo. 2. 664. Croo. 10. 130. For Jewels in a Pot, or out of a Pot. 2 H. 7. 4. Pl. 13. For Pearls and Jewels. Croo. 1. 230. It will lye for Doggs. Hetley Rep. 50. So for any Cattle. Croo. 1. 197. 200. So for a Hatband set with Diamonds. Croo. 2. 244. Stiles 44.

It will lye for Corn in a sack, or out of a sack. Croo. 2. 263. For four bushels of Wheat. Trin. 22. Jac. B. R. Hill and Hawks. Twenty loads of Wheat. Croo. 1. last publisht. 765. For twenty peaks of Corn. Trin. 38 Eliz. C. B. Price and Sir Walter Sands. So for a pinte of Corn in the nature of a tole, by a custome, or prescription. Bulstr. 2. part 201. For twenty loads of Hay of Tithe. Croo. 1. last publisht. 814.

It will lye for forty measures (or for forty bushels) of Pippins. Mich. 9 Jac. in the Exchequer. Error inter Claydon & Taylor. For two barrels of Butter. Croo. 2. last publisht. 219.

It will lye for Monkeys, Dogs, Hawks, and such like things as are ferae naturae, when they are reclaimed, but not before. Mich. 9 Jac. in Exchequer-Chamber. Shakley and Porter. Croo. 2. 262. Bulstr. 1. 95. Croo. 1. 391. Croo. 2. 262. Dyer. 306.

If one find an Obligation, and cancel it not; this Action lyeth not, but trespasse: And if he receive the mony, and deliver the Obligation to the Obliger, an Account, not this Action lyeth. Croo. 1. last publisht. 723. See Bendloe. 140. 145. Stiles. 361. 482. 209. 313. 18. 25. 31. 73. 136. 194. 199. 224. 235. 247. Croo. 3. 129.

3. For the Case. Sect. 3.

If any man shall get into his hands any such goods of mine, living or dead, being my goods, by finding, borrowing, or other wise, in any case whatsoever, and he hath no right to, or property, or possession in Law to the thing, and he waste it, convey it away, sell it, or otherwise convert to his own use, or keep it from me; I may have this Action against him.

him. And in some of these cases another also at my election, Coo. 4. 84. 29. Ass. Pl. 28. 12 Ed. 4. 8. 27 H. 8. 13. 39 H. 6. 2.

And therefore if I lose any such goods, and another man finde them, as if he take up my Hawk, that it escaped, or my Horse, or Beast, that was estrayed away: Or if a man that is an Executor to another, have my goods, that were in the keeping of the Testator, and come to him amongst the Testators goods: Or a felon leave my goods within a Mannor, and the Lords Bayliff, seize them, not being waived: Or a man ride my Horse to an Inne, and the Inne-keeper keep my horse from me; I may have this remedy for my goods. 12 Ed. 4. 8. 15 H. 8. 39. 7 H. 4. 3. Dyer 306. Lit. Broo. sect. 174. 382. 405. Finches Ley. 181. 186. Coo. 2. 25. 5. 27. 109.

If a man take another mans Cattle to pasturage, for so much the week, as long as they are with him, and I buy the Cattle, and then demand them of him that keeps them, and hee refuseth to deliver them without payment for the keeping, and afterward hee delivereth them to another by order of him that sold them to me; I may have this Action against him that kept them; for in that case, without any special agreement made in the tack of them, hee may not keep them, as an Inne-keeper an Horse, or Taylor a Garment. Croo. 1. 197. Bailment of goods.

If a man take my goods before my face, or as a Trespasser; I may charge him in this Action if I will. Croo. 1. 63. Yet see Coo. 11. 89.

If I be a Suitor to a woman, and whilst the wooing time lasteth, I give her gifts, and after wee break off, and I demand the goods, and shee refuse to deliver them; it seems I may recover them upon this Action. Mich. 7 Jac. B.R. Dame Fitz. Case. Gifts given by a Suitor to a Maid.

And generally where in any case another hath any thing of mine, in such a case, as that I may have a detinue for them, after I have demanded them, and hee hath denyed them; I may have this Action, or a detinue for them, which I will: And therefore one declared, that hee delivered to the Defendant certain Mools to keep, and hee converted them to his own use, and it was held, albeit hee did not say hee lost them, it was good, and that the conversion takes away the property. Croo. 1. last publisht. 781. 2 H. 7. 20. Dyer. 22. And in the Case of Cullimore and Sympson, Trin. 14 Jac. B. R. It was said by Doderidge Just. That in every Action of Debt, an Action of the Case is implied, and when it appears how the Debt grew due, then it's a good Assumpsit; and in this Action the finding or losing is not material in pleading: For if the Defendant take it in the presence of the Plaintiff, or before any other, or as a Trespasser, yet the other may charge him in this Action, if hee will. Croo. 1. 63. Detinue. Implicit Assumpsit.

But this Action will not lye where he that brings this Action hath neither right to, nor propriety in, or hath had the possession of the thing sued for. 20 H. 7. 7. Pl. 18. Broo. sect. 198. 231. Croo. 1. last publisht. 484. 485. Nor where hee brings his Action upon a possession, and hee doth not shew that hee was once in the actual possession of the thing. 2. The party against whom the Action is, must have, or hath had the goods in his possession; for if hee never had them, hee is not chargeable in this Action, but it is not material whether hee have them by finding, or if hee take them away before the owners face, it lyeth. Croo. 1. 63.

Nor where the party that hath the goods, hath them by delivery without Trust: As where I deliver my goods to a Carrier, to carry for me, and hee doth keep, waste, or wilfully of them; there this Action will not lye, for in this Case another kind of Action of the Case lyeth. Mich. 9 Jac. Worm. and Walls Case. Sect. 4.

But

But this Action will lye for goods found and converted, although they come after to the hands of the party that lost them. Stiles. 361.

For an Administrator.

And it will lye for an Administrator for the goods of the Intestate taken by one before the Letters of Administration granted. Stiles. 341. In Pasche. 43 Eliz. Bishops Case.

If a Lords Bayliff shall seize my Cattle for a Herriot, where none is due; I may have Trespasse, or Action upon the Case against him for it; but this Action will not lye.

So where hee that hath the goods hath a good right to, or property in them by sale in a Market, or Fair, &c. or Gift, or as a Heriot, Estray, or the like. Dyer. 306. Croo. 1. last publisht. 146. 433. 434. Or hath good authority by Law to take them. Croo. 1. last publisht. 433. 459. 611. 693. 716. Bulstr. 3. 269. New Book of Entries. 39. 41. Coo. 815. Broo. Distresse. 198. Lit. Broo. 405. 193. Dyer. 121. Pl. 16. Bulstr. 2. part 308. 309.

Nor will it lye where the party that hath them hath a lawful possession of them onely: As where a man put his Horse to mee, a Horse-rider, to ride him; or I being an Inne-keeper, detain him for his meat, or I duly seize him as a Waife, or an Estray, distrain him for Rent, or the like. N. B. Entries. fol. 10. 41. Coo. 8. 147. Hill. 14 Jac. B. R. Robsons Case. Bulstr. 1. part 170. Bulstr. 3. 269. 289.

Nor will it lye for a bare finding, or receipt, and a possession onely without a conversion. Broo. sect. 405. For Conversion being the substance of the Action, is traversable, Croo. 1. last publisht. 97. 377. And therefore if one deliver another mans goods to mee, and I do not convert them; no Action will lye against mee for this: And yet at Glouc. Assizes. 1650. The Case was, a Colt followed my man and horses into my Stable, and I bid him put him up in another Stable, and give him meat, and the Colt was lost, and the owner recovered his damages of mee for him.

This will lye against an Executor for a Conversion in the time of the Testator. Croo. 1. last publisht. 377.

Pleading in this Action. Averment.

So that to maintain this Action by a Plaintiff, hee must averre and prove these things.

1. That hee hath a right to the thing.

2. That the Defendant hath, or had it in his possession.

3. An Actual Conversion, that the Defendant sold them, or disposed them to his own use; or a Conversion in Law, that is, a demand of the goods, and a denyal, for how else shall a man that finders goods know the owner of them, and to whom to deliver them. Per Sergeant Turner at Lent Assizes in Glouc. 23 Car. 1. Broo. sect. 198. 231. 405. And distresse makes no Conversion, but an unreasonable detainer will make a Conversion. Hobb. 250.

Some say there must be an Actual Conversion proven: and that in Trin. 44 Eliz. Co. B. It was adjudged, that if A. deliver a chain of gold to B. and A. demand it, and B. deny it, and say hee shall not have it, till hee can recover it; that this was no Conversion; And that Hill. 12 Jac. B. R. In the case of Isaac and Clerk, by three Justices. 23 H. 6. 27. That the Count is in usum suum proprium convertit & disposuit, and that naked denyal is not a Conversion. But it seems the contrary is held and practized at this day for Law; And it was held by all the Justices (Popham absente.) Mich. 38. 39 Eliz. B. R. in the case of Eaton and Newman that a request and denyal to deliver the goods is a Conversion. Croo. 1. last publisht. 495. And so it was ruled by Baron Henden at Glouc. Assizes.

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sizes. 17 Car. 1. That a demand and a denyal is a Conversion: And that whatsoever is such an Act for which Trespasse will lye, is a Conversion, to give this Action upon the Case upon a Trover. And it was said by the Chief Justice in the Case of the Chancellor, &c. of Oxford. Coo.10. 56. That a denyal to re-deliver goods upon request, is a good evidence to a Jury for them to finde a Conversion. And there it was said, that if A. bring an Action upon the Case against B. upon Trover and Conversion of Plate, Jewels, &c. and the Defendant plead, not guilty, that this prima facie is good evidence to procure a Conversion: That the Plaintiff did request the Defendant to deliver them, and hee refused; and therefore it shall be presumed, that hee hath converted them to his own use: But yet it is but evidence; and therefore if this be found by special verdict in such a Case, that the Plaintiff did request them of the Defendant, and hee did refuse to deliver them; the Court may not judge a Conversion upon this; for the Conversion must alter the Action of Detinue to a Trespasse upon the Case, which a denyal cannot do in Law: For in every Action of Detinue, there is alledged in the declaration a request, and a refusal; yet it is good evidence; and so it hath been alwaies allowed to prove a Conversion in this Case, that the Plaintiff did demand the goods, and that the Defendant did refuse to deliver them. But for money out of a Bagg, or Corn out of a Sack, which are things that cannot be known; there, it seems, a bare denyal is agreed by all to be a Conversion. Pasche. 14 Eliz. in the Exchequer. Demand and denial is a conversion.

And in Croo. 1. part 190. Trover and Conversion was brought for a Bond, and he counted that it came to the Defendants hand, and that the Plaintiff such a day and year demanded it, and the Defendant had not delivered, but refused to deliver it, and converted it to his own use; and a Writ of Error brought on a Judgement in the Case, and tok exception; but the Judgement was affirmed, and there it was held by the Court, that the denying to deliver it upon request, was a Conversion. Wilson and Chambers. So the Court. Co. B. Trin. 14 Jac. That a Request, and a Refusal to deliver the goods, is a Conversion. And so it is reported by Brownl. and Goldsb. 17. That in Trover it is usual to prove no more but that you requested the goods, and the Defendant refused to deliver them. This is a Conversion. Stiles Rep. 361. Yet see Bulstr. 2. 307. See Goldsb. 152. East and Newmans case. Demand and denial is a Conversion. 43 Eliz. Co. B. Hut. Rep. 10. Hobb. Rep. 187. Coo. 10. 46. 47. Bailment of goods.

And it is held where I may have an Action of Detinue for goods detained from mee, in that case I may at my choice have it, or an Action upon the Case. Stiles Regist. 6. Stiles Rep. 3. Leonards Rep. pl. 303, 304. Bulstr. 1. part 29. 68. 95. 120. 127. 170. So that if any man finde my goods, or take them from mee, or from another that hath them, or if he have them by my delivery, or by the delivery of another to whom I delivered them, and hee either keep them from mee, dispose of them, spoil or convert them to his own use, or they be stolen, or taken from him, and I suffer damage by it; I may in some of these cases have either this Action, or some other at my choice; and in some cases I must have another Action. Detinue.

If a man finde a thing, and useth it; this Action will lye as before, but if hee keep it negligently, as not to give a horse found, meat, or let a garment found, be moth-eaten, it will not lye; and yet if he of purpose spoil such a thing, as put Paper into Water, or the like; this Action will lye for this. Croo. 1. last publishe. 219. See more for this. Stiles Rep. 12. 18. 25. 31. 48. 75. 126. 136. 182. 194. 199. 224. 235. 247. 261. 361. 432. Bulstr. 3. 151. 209. 269. 289. Stiles Rep. 313. 361. 482. Godb. pl. 255. 462.

Bulstr. 2. part 135. 201. 262. 290. 307. Croo. 2. 307. 129. Croo. 1. 206.

If I have found Goods, and the owner in this Action against mee hath Judgement, and I dye before execution; hee may recover the Goods from my Executor or Administrator. Croo. 1. last publisht. 181.

Detinue, where it lyeth. Sect. 6.

It hath been before maintained, that in many cases where I may have a Detinue for Goods, I may convert this Action into an Action of the Case; it will not therefore be impertinent to shew, where a Detinue will lye for goods; And for this it is to be known,

1. That a Detinue will lye for mee against another that cometh to my Goods, Cattle, or Writings, either by finding, or by my delivery of them to him, either to keep, or to re-deliver to mee, or to deliver over to another, and hee doth not so, but refuseth to do it, detaineth, loseth, or mis-imployeth them; there I may have this Action to recover them, or damages for them, at my choice. Coo. upon Lit. 286. Dyer. 331. Kelw. 64. 18 Ed. 4. 23.

2. That in all cases where this Action of Detinue is maintainable, there must be these things in the Case.

Action upon the Case.

1. The Action must be brought for personal Goods, or Chattle, valuable, and that may be known, such as are, Cloth, Houshold-stuff, Baggs, or Chests of money, baggs of Corn, loads of Wood, Tuns of Oyl, and the like. But it will not lye for money out of a bagg, or chest, or Corn out of a sack; but in such a Case, the Action upon the Case, or some other Action lyeth, rather than Detinue. Dyer. 22. 29. 12 H. 7. 5. 12 H. 8. 3. 6 Ed. 4. 11.

2. He that brings this Writ of Detinue, must have a right to, or a property in the thing demanded, when hee brings the Writ, or he must be chargeable over to some other for the thing. Coo. 11. 89. 27 H. 8. 33.

3. The thing demanded must be once in the custody and possession of him that is to be charged. Coo. 11. 89.

4. This custody and possession must continue, and not be removed by Act of Law, as seizure, or the like. Coo. 11. 89.

5. The party to be charged by this Action must not have a Right to, or a property in the thing to be sued for.

6. The nature of the thing demanded must continue. 27 H. 8. 13. 12 Ed. 4. 8.

7. If I have a Right to Goods, as an Herriot, Heir-loom, or Rationabilis pars bonorum; or as an Executor where the Goods are amongst another mans goods; I may have remedy for them by Detinue; and in some Cases shall recover damages for them, by this Action. Kelw. 184. 8 H. 7. 10. Plow. 90. Dyer. 202. 331. See more. Yelverton. 194. 164. Bendloe. 196. March. Rep. 59. See more in the next chapter of this Head; and see chap. 15. sect. 3, 4.

CHAP. IX.

Where an Action upon the Case will lye upon the Delivery of goods to another, or not.

Bailment or Delivery. How it is. Sect. 1.

The Action of the Case doth oft times arise, and is occasioned by the delivery or bailment of Goods, or Chattle from one man to another. And for the opening hereof, take these things.

1. Bailment is said to be either simple, where one receiveth my goods, either to keep for mee, or to my use, or to re-deliver to mee again; in which Cases I may take my goods again without request; or to deliver them over to another person; and in this case before they be delivered over, I may countermand the authority, forbid the delivery of them, and

Countermand.

require

require my goods again, and if hee refuse to deliver them to mee, or shall deliver them to the third person after the countermand; I may in some cases have this Action for them, and in some cases an Account: Or this Bailment is conditional, that is, to be re-delivered to mee when money is paid, or something else is done; then it is a pledge: And this delivery is sometimes to imploy; as where I deliver to one my goods, or money to use, or imploy for my profit; as to sell meliori modo quo poterit. And in this case if hee sell it for twelve pence, although it be worth a hundred pound, or hee might have had a hundred pound for it; I can have no remedy against him for this. Finches Ley. 176. 5 H. 7. 28. But in other cases I may have a Detinue, or take my goods where I finde them.

Account.

Pledge.

Detinue.

If I deliver my Sheep to another to keep, and hee suffer them to be drowned by his negligence; or I deliver another a Chest to keep, and this is lost, or broken; or I deliver one my Horse to ride to York, and hee ride him further; or I deliver one my Horse to keep safe, and hee kill him; in all these cases, and for all these wrongs this Action lyeth as the proper remedy. Coo. 5. 13. 12 Ed. 4. 18. Estoppell. 78. An Action was brought for this, That one delivered his goods to T. who delivered them to the Defendant, to the use of the Plaintiff, and the Defendant had them. In this Case it was the opinion of the Court, that this Action lay against the Defendant: And there it was held, that if one deliver his Horse to a Smith to shoe him, and hee delivereth him over to another Smith to shoe him, and hee prick him, that the owner may have this Action against the second Smith. 12 Ed. 4. 13. Action upon, &c. 19.

Breach of trust.

Malefeasance.

Smith had my horse to shoe.

If I deliver one my Cloth, and he cut it, and make garments of it; I may have this Action against him for it: And so for any thing else of mine delivered to him, if hee abuse it. 18 Ed. 4. 23. 20 *H.* 7. 9. 12 Ed. 4. 8. 2 *H.* 7. 11. 21 Ed. 4. 67.

If I deliver my Servant money to discharge an Obligation for mee, and hee doth not pay it as I appoint, and by this means I forfeit my Obligation; I may have this Action against him. 20 H. 7. 9.

Master and Servant, breach of trust.

If I deliver Corn in sheaves to I. S. and hee thresh them, and keep the Corn; I may have this Action; or I may seize the Corn threshed, for the threshing doth not alter the property. 38 Eliz. B. R.

Upon delivery of goods.

If I deliver one money, and hee promise to deliver it back to mee, and hee doth not; I may have this Action for it. Lib. Intr. 10. sect. 1.

If I deliver to another my Deed, and hee burn or tear it; I may have this Action against him. 9 Ed. 4. 52. Detinue. 57.

If one lend mee Corn, or any such like thing, hee may not expect the same thing in kind again, but the like, or so much. But if one lend or hire mee a horse, or such a like thing, hee must have his own again in kind: And if it be used to any other purpose, than that for which it was borrowed, or hired, albeit it be never the worse for it, yet an Action upon the Case will lye for it. And if the thing borrowed, or hired, be lost, albeit it be not by any neglect of mine; as if I be robbed of it, or the like: Or it be impaired by any neglect of mine, albeit I put it to no other use than what I borrowed it for. As if I shall put a Horse I have borrowed in an old rotten house, ready to fall, and it doth fall, and kill him, I must make him good. But if such goods so borrowed by mee perish by the Act of God without any default of mine, as where a horse is put in a strong house, and the house fall upon him, and kill him, or hee dye by some sickness, that with all my care I could not prevent, or by the default of

Upon a Loan.

the owner; in these cases I shall not answer for him. And if a man deliver mee, or leave with mee his goods in my house, or shop, or elsewhere, to be kept, and I receive them in generally, without caution, such as this, I will keep them as I keep mine own, or if they be lost, I will not answer them, or the like; that in this case I am bound by Law to keep them safe, and to see them safely restored, albeit I do it out of charity, and have nothing for it; And albeit I do not make any promise to keep them safe, &c. and if in this case the goods be hurt, lost, or spoiled, whiles they are in my custody. And (as some hold) albeit it be inevitable, by robbery, or the like means, and against my will, yet I must answer them. It will be therefore the wisdome of them that take into their custody any thing of their friends to keep for them, to take it into their custody with that Caution, or not to meddle with it. 10 H. 8. 21. 2 H. 7. 11. 2 Ed. 4. 5. Coo. 4. 38. 84. Coo. upon Lit. 89. 29. Ass. pl. 28. 3 H. 7. 4. 10 H. 7. 26.

Delivery of goods without a Loan to keep.

Caution.

If one deliver mee a Coffer with things in it, and the Coffer is locht in my house, but he keepeth the key thereof; in this case, if any thing be lost out of it, I shall not be chargeable. But if the whole Coffer and things in it be gone, I shall be answerable for it. Coo. 4. 82.

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If A. deliver goods to B. to my use, or to deliver over to mee; and B. retain them from mee, A. or I my self may have this Action against him. 5 H. 7. 13. F.N.B. 38. 21 Ed. 4. 55.

If I have goods of another by delivery, and hee require them of mee, I may no longer keep them, unlesse I will expose my self to an Action a-gainst them. Hutton. 10. Hobb. 187. Coo. 10. 46.

If I deliver a Jewel to one to transport beyond Sea, and there to sell it, and render an account thereof to mee, and hee break it, and convert it to his own use; I may have this Action of the Case for my relief. Croo. 1. last publisht. 520.

If I deliver to another a box of Jewels, or mony loch'd fast in a box, to keep for mee, or lend a man my horse to ride, or deliver a Taylor my Cloth to make a Garment, or deliver my goods to a common Carrier, or my horse to a common Hostler, and hee to whom it is delivered break the box, take away the Mony or Jewels, ride my Horse further, or do not deliver him back to mee; Or the Taylor spoil, marre, or sell my Cloth; or the Carrier lose or spoil my goods; or the Hostler abuse or detain my Horse; in all these cases I may have a Detinue for the thing, and an Action upon the Case for the abuse thereof. Coo. 4. 95. 18 Ed. 4. 23. Dost. and Stud. 102. 2 H. 7. 11. 12 Ed. 4. 8.

Taylor. Carrier. Hostler.

Detinue and Action upon the Case.

But if one deliver mee goods, to deliver over to another, and I do so, or deliver mee a horse sick of divers diseases, whereof he dies, before demand of him, or I re-deliver the thing again to him, or deliver it over according to appointment, before any Suit brought, or the party that hath delivered, hath afterwards given mee the thing: Or a Taylor keeps the Garment for his mony for making of it; or an Hostler keeps the Horse for the mony for his meat, or the goods pledged be stoln before the tender of the mony; in all these cases no Action will lye against mee for the goods. Coo. 4. 23. 21 Ed. 4. 55. 22 Ed. 4. 8. F.N.B. 138. 3 H. 7. 18. Coo. 4. 23.

Taylor.

If I take a mans Cattle to tack, and they dye in my keeping, or be stoln from mee; it seems I am not to be answerable for them. Ans. yet some doubt of this. 14 H. 8. 21.

Bargemen.

If goods delivered be lost by the hand of God, as where there is a tempestuous storm upon the water, and to save the lives of the Passengers, the Bargemen

Bargemen, or Mariners throw the goods out of the Boat, into the Sea; or Shearmen, no Action will lye for this. Bulstr. 2. part 280.

If a stranger come with my Horse to an Inne, and there leave him for a pledge for his meat; the Inne-keeper may keep him till he is paid for his meat; and no Action will lye against the Inne-keeper for it. Coke 8. 146. Bulstr. 3. 289. 169. Inne keeper.

If I finde goods, and they are distrained in my hands for my Rent, or taken in execution for my debt, or upon an Outlawry against me, or I sell them away; in all these cases the owner may have remedy by this Action against me. 27 H. 8. 13. 12 Ed. 4. 8. But my goods may be taken in another mans ground damage feasant, or as a distresse for Rent if they be found there; and I shall have no Action for this against the owner of the ground. 27 H. 8. 13. 12 Ed. 4. 8. So if I will leave my goods with another whether he will or no, and there they be taken damage feasant, or as a distresse for Rent; no Action at all shall lye against him for this; So if he himself on whom they are left distrain them damage feasant; and yet if in this case he shall kill, or sell my goods, I may either have this Action upon the case, or some other Action. Coke 11. 89. 43 Ed. 3. 21. Trover.

As to the Conditional delivery of goods in the nature of a pledge, and for the knowledge hereof, take these things. About a Pledge of goods.

A Pledge is a pawn of goods only, or bound for money borrowed pertinently to be the goods of the Creditor for ever, if the money be not paid at the day agreed upon. As where one doth deliver a Chattle personal to a man in assurance of another thing lent of him at the same time: And this either in deed, when it is by the agreement of the parties; As where one doth pledge Jewels, Plate, or Cloaths to another for twenty pounds which he hath borrowed, or doth owe to him, and if he do not pay the money at the day, that the party shall have them; in this case if he pay the money he is to have his pledge again, if not, the other is to keep them; and if he pay, or tender the money, he is to have it, or may have his Action of Detinue to recover them, if he refuse to deliver; or he may take his goods again, if he can come by them; or it is by Law, as where one gives his Garment to make to a Taylor, when he hath made it, he may keep it till he be paid for the making of it, but he cannot sell, or use it, till he be paid for it. So a Horse in an Hostery is a pledge; for an Hostler may keep him, but not sell, or use him, till he be paid for his meat, and if the owner leave him till his meat comes to as much as the horse is worth, then he may sell him, and take the money. Agreed. Trin. 3 Jac. B. R. Lit. 332. Kelw. 82. Pledge what, Sect. 3. Detinue. Taylor.

And in this case, the party that doth pledge the goods till the time of redemption, or forfeiture, hath such a general property in them, as if in this time they be casually lost, he must abide the loss, and they cannot be forfeited by the party that hath them in pawn for any offence of his, nor may they be taken in execution, or attatched for his debt; and the party that hath them in pawn at first, or second hand, hath such a property special in them, that if the thing pawned be a Horse, Ox, or the like, he may work him, as a Cow, he may milk it; and if it be any other thing that will grow much worse by usage, as Apparel, or the like, he may not use it; but other goods not the worse for usage, may be used, and if he abuse it, an Action upon the Case will lye against him for this, as from that did put it to pawn; and so the Action will lye in other cases for any thing done in either side, for any thing done by the other party against these Rules. Owens Rep. 124. Now the party the pledge may assign it The nature of it, and the interest of the parties to it. Property. Action upon the Case.

it over to another, who is to hold it subject to the same condition; and if the goods be taken away from him that hath them in pawn, he may have an Action of Trespasse for the taking of them, and say, Quare bona & Catalla sua cepit, &c. And if he that hath the pawn dye before the day of Redemption, his Executor shall have it upon the same terms as the Testator had it. Broo. Attatchment. 20. D. Doct. and Stud. 130. M. 7 Jac. C. B. Levils Case, by three Justices. Owens Rep. 124.

Action of Trespasse.

If one pledge goods for mony, and no time is set for the redemption of it; it seems in this case, it may be redeemed after the death of him to whom it is pledged, but not after the death of him that pledged it. Croo. 2. 244, 245. And the tender of Redemption mony must be to the Executor, or Administrator; and when it is tendred at the time by Law appointed for the tender thereof, if it be refused, it is as good as payment, and the special property of the thing is revested in him that did pledge it. Croo. 2. 244, 245. and Yelverton. 178. And if goods be perishing, and in case where no time is set to redeem it, and he let it lye till it be spoiled, it being Corn, Oyl, or the like thing, and there being no default in him that hath the possession of it; the party that pledged shall suffer the losse of it, and he to whom it is pledged shall have debt for the mony, as he shall in case, where tender and refusal is of the mony. Croo. and Yelverton. the same places. Coo. 4. 38. upon Lit. 89. 2 Ed. 4, 5. 2 H. 7. 11. And goods pawned may not be put in execution, till the debt for which they be pawned be paid.

If one deliver mee goods as a pledge, and before the tender of the mony, the goods be stoln from mee; in this case I shall not answer them: But if he tender mee the mony at the day, and I refuse it, and refuse to deliver the pledge, and they be after stoln away; in this case I must answer them. St. Germain. lib. 2. 38. 2 H. 7. 11. 2 Ed. 4, 5. Coo. 4. 32. 38. upon Lit. 89.

Detinue.

Note.

And here it is to be noted, That in very many cases where I may have a Detinue, or a Trespasse for a wrong done to mee, I may also order the matter so, that I may bring an Action upon the Case for my relief at my choice. Croo. 1. 63. Croo. 2. last publisht. 781. 2 H. 7. 20. Dyer. 22.

Detinue.

And in all these cases about the delivery of goods, if they be kept from the owner, he must have remedy either by Action of Detinue: Or if there be a Demand and Conversion of the Goods, he may have his remedy by this Action upon the Case. Coo. upon Lit. 89. Coo. 4. 38. See more of these things, chap. 15. sect. 3, 4. throughout.

CHAP. X.

Of an Action upon the Case about Suits in Law, and where it lyeth, or not.

The Action upon the Case doth oft times grow and arise by something relating to Suits in Law, and by something done, not done, or done amiss thereabouts. For the knowledge whereof take these following things.

Sect. 1.

1. That vexatious Suits are not favoured in Law, nor in the Courts of Law. Stiles Regist. 9.

2. It hath been said in B. R. by the Court, That it is cause sufficient to ground an Action upon the Case for one to put another to the trouble and charges,

charges to sue for that which is his own. Mich. 22 Car. 1. Stiles Regist. 6.

If one sue mée in any Court of purpose to ver mée; I may have this Action against him for it. 8 Ed. 3. 13. 43. 1 Ed. 3. 20. And this is most clear in case where an Agréement is betwéen two or more to ver mée this way, Stiles Registr. 10. 8 Ed. 4. 13. 43 Ed. 3. 20. Coo. 12. 100. For vexatious and causelesse Suits.

If one shall bring a vexatious Suit, or Suits against mée, as where one shall enter an Action of great value, and stand upon great bail for small causes. Stiles Rep. 452.

So if one have his hand in cause, or procure such vexations Suits against mee, I may have this Action; as if one cause a false office to bée found, whereby my Land is seized. 47 Ed. 3. 15. Kitch. 175. F.N.B. 188. F.N.B. 98. 116. See Stat. 8 Eliz. chap. 2. Croo. 1. last publisht. 234. And yet it is said in this, that albeit the Action may lye against him that procureth, yet it will not lye against him that sueth without cause. Croo. 1. last publisht. 794.

If one sue mee for another, without his privity, or by mistake, and by this I am damnified; I may have this Action. Croo. 1. last publisht. 628. But if one sue mée for good cause, although by this any special damage happen to mée, as my Creditors fall all upon mée, or the like; no Action will lye for this. Trin. 15 Car. 1. Thurstons Case.

If I be bail for I. S. in the Kings Bench at the Suit of A. for one debt, and after B. sues him there for another debt, wherein hée hath other Bail, and after B. gets a Judgement against him, and hée fraudulently to ver mée, &c. informs the Court that I am bail for his debt, and maliciously follows it, and gets execution against mée, knowing I was not the man; I may have this Action. Croo. 1. last publisht. 628, 629.

If one sue mée in a case where hée is prohibited by a Statute (but without any penalty in the Statute) to do it; this Action will lye. But it must be brought tam pro Rege, &c. quam pro seipso. Croo. 2. part 133. Coo. 12. 100. As if one sue mee for Tithes, where I ought not to pay Tithes, a thing forbidden by 32 Eliz. chap. 7. I may not have this Action for this. Adjudged. Partridges Case. And yet the contrary seems to be held. Croo. 1. last publisht. 836. Coo. 2. 134.

If I be bound to appear in a Court by a day, and before, or at the day, one cause mee to be arrested of purpose and malice, to prevent my appearance, and cause a forfeiture of the bond; I may have this Action for this wrong. 7 H. 6. 45.

If one sue mée for a thing I have paid, as after hée hath released mée of the Action, and hée doth this knowingly; some say, I may have this Action for this. Sed Quere.

It is said, if one sue mée for a thing arbitrated, before the day come; it is said, this is actionable. Regist. 111. 4.

If one release to mée with warranty, and then procure another by collusion to sue mee for the Land; this is said to be actionable. 34 Ed. 3. 20. Deceit. 28.

If a Parson agrée with mée to retain my own Tithes, which is a good agréement by word of mouth; and hée shall afterwards sue mée for them; this may happily bear this Action. Brown. 2. part 11. 17. Godb. pl. 426.

If one forge an Obligation in my name, and put it in Suit against mee; I may have this Action against him. Coo. 4. 18. 22. Ass. 8. Forgery.

It is said, that I may have this Action against him that shall sue out a Latitat against mee without cause. Stiles Rep. 211.

Any

And yet if one bring against mee a false and a feigned Action, by which I am cast into prison, and there dye; no Action lyeth against him by mee, my Executor, or Administrator. Jenk. Century. 4. Case 7. 2 R. 3. 10. Stat. 7 H. 8. 7. 21 H. 8. 4. So for any such like thing done in a course of Justice, for hee will have amends in the same Court, as if he bring a writ of Forgery, &c. for the forgery of a Deed, &c. Dyer. 245. Coo. 4. 14.

And where the Plaintiff in a Suit is barred, or Non-suit in his Action, regularly the punishment is but Amearcement, and the payment of Costs; no Action lyeth for the Defendant. Jenk. Cent. 4. Case 7. So if one sue mee twice for the same thing, some say no Action lyes for this. And yet others hold, that after the Suit is ended, the Defendant may have this Action for the vexation. Coo. upon Lit. 130. Dyer. 285. And yet it is said, that if I had paid my money on a bond to the Obligee at the day, and hee doth after sue the Bond against mee; that no Action will lye for this. Pasche. 17 Jac. B. R. per Ch. Justice. And if I have a Judgement against another, and have levied goods upon an Execution to satisfie the Debt, and the Sheriff return, they are in his hands for default of buyers; and the Plaintiff knowing of this, doth sue out a new execution, and the Sheriff doth execute this new execution; that no Action will lye against the Plaintiff for this. Pasche. 17 Jac. Co. B. Waterer and Freeman.

If the Parson sue mee in the Spiritual Court for Tithe of grosse Trees, or sue mee the second time for what hee hath once recovered, it is said this Action will not lye: And yet it is said also, that if I sue him there after that I have shewed him a composition beyond the time of memory; that I may have Action for this. Croo. 1. last publisht. 836. 18 Ed. 4. 6. But generally, no Action will lye against mee for suing in any Court, as Plaintiff, or Defendant, where the Court hath jurisdiction of the Cause, and I have just cause to sue, or defend a Suit. 7 H. 6. 45. 8 Ed. 4. 13. Action upon the Case. 4. prohibition. 9.

If one prefer Articles, and take his Oath against mee, to this end, to have mee bound to the good Behaviour, before a Master of the Chancery: And afterwards desist in this, and then gets a Supplicavit out of the Kings Bench, to have the good Behaviour against mee there; I may have this Action against him for this last Act, but not for the first Act, although the Articles be scandalous. Brownl. and Goldsb. 3. And yet if one cause mee to be vexed and molested before Justices of Peace by Indictment, or the like; I may have this remedy against him if it be without cause, and purposely to ver. Coo. 4. 14. F. N. B. 114. D. 116. a. See more, chap. 15. sect. 5. case 8. 10. 38.

For an undue proceeding. Sect. 2.

If one sue mee in a Court that hath not Jurisdiction, either of the person, or of the cause; this Action will lye; as for suing in the Admiral Court for a thing done upon the Land; and for this the Admiral himself also may be sued, Brownl. and Goldsb. 4. Or sue an Appeal in the Common Bench. Dyer. 159. Stat. 2 H. 4. chap. 11. Stiles Registr. 6.

So for suing of mee in the Spiritual Court, for a thing not triable there; as for a Temporal thing, &c. this is actionable. Croo. 1. last publisht. 836. Croo. 2. 134.

So if one sue mee in the Kings Marshalsie, in a Case where neither of us are of the Kings Houshold; I may have this Action for this. Jenk. Century. 8. case 34.

So if one had sued mee in the Starre-Chamber, when it was, for any thing whereof that Court had not Conusance; I might have had this Action.

Action. But to sue mée in a Court that hath Conusance of the cause in an unjust Suit, or improper Action, will not, except in some special case bear this Action; for I shall have Costs in the same Court for my recompence. Hobb. Rep. 266. Coo. upon Lit. 261, 159. Dyer. 285. Plow. 37. Coo. 4. 14. 10. 76. 10 H.6.13. Croo. 2.133. 1. last publisht. 836. Stat. 2 H. 4. chap. 11. Fitz. Estoppel. 18.

If one arrest mée to appear in the Admiralty, and I was never sued there. Coo. 12. 100. Bendl. 3. 10 H.6. 13. 7 H.6.30.

If one arrest mée in London; knowing mée to be privileged in Banco. 7 H.6.45.

If one cast a Protection without cause. Croo. 1. last publisht. 628, 629.

If one sue mée in a forein County, and there secretly pursue mée to Out-lawry, I having no notice of it; I may have this Action. New Book of Entries, f. 42. Stat. 8 H.6 ch. 10. 6 H. 6. ch. 1. Kelw. 21. In another County. Out-lawry.

If an Officer in the Court of Audience procéd against mée there illegally, by which I have any special damage; I may have this Action against him. Coo. 2. 351. In another Court.

If one sue mée for Tithes in the Spiritual Court, when none are due; as where I have paid them, or none are due at first; no Action will lye for this, no more than for suing of mée in any Common Law Court without cause; as where one sues mee in Debt upon a Bond where the Debt is paid. Croo. 1. last publisht. 836. Croo. 2. 134.

If I have in a Suit against another upon a Tryal gotten a Verdict against him, and so am shortly to have a Judgement; and I shall beforehand arrest him upon another feigned Action, to have him in a readiness, when this Judgement and Execution comes; hée may have this Action against mée. Stiles. 211.

If one arrest mee in anothers name without his consent. 7 H.6.43. With Fraud.

If one recover a Debt against mée in the Common Bench, and I bring Error in the Kings Bench, and thereby the Record is removed thither: And hee afterwards knowing all this, yet sues out a Cap. ad Sat. against mée, and by reason thereof I am molested; I may have this Action. Croo. 1. last publisht. 574.

If I that am an Attorney, get a man to be removed by Habeas Corpus out of London by a surmise, that hee hath a Suit in the Kings Bench, which is not true, no Action will lye for this. Croo. 1. last publisht. 628, 629.

If one sue a Writ in my name, without my privity, and by this I am forced to pay a Fine; I may have this Action against him. Regist. 112. a. Q. Impedit. 112. A. B. See more chap. 15. sect. 5. case 8. 12. 14, 15, 16, 17, &c.

If one in a Suit or Action shall come into a Court in my name, and as in my person, and there shall do or suffer any thing as in my name, without Warrant from mee in it, by which I have any damage; I may have this Action for it. As if one sue as the Executor of the Conusee of a Statute Execution thereof against mée, where hee is not the Executor; or where the Conusor is alive; I may have this Action against him: So if hee sue as Administrator, and hath Letters of Administration. 2 R. 3. 8. So if one purchase a Writ out of Chancery in my name, and thereupon a Fine is to be paid to the King: Or if I have cause to sue another, and a third man shall sue him in my name, and let Judgement go against mée by non-suit, or the like: So if one acknowledge a Judgement, enter into a Bail, levy a Fine, or suffer a Recovery in my name, and all this without my leave or privity; I may have this Action for my Remedy. F. N.B. 96, 97. 100. 19 H.6.44. Personating another.

If a Writ be brought against two as Executors, and one of them is no Executor, and he confesse the Action, &c. the other that is hurt by it may have this Action. F.N.B. 98. 9 Ed. 4. 15. See more, chap. 15. sect. 5. case 9.

So this Action will lye against him that shall procure another to personate mee in a Court, and thereby to do any thing in a Suit to my prejudice. Regist. Orig. 113. B.

Serjeant, Councellor, Attorney.

This Action will lye against a Serjeant, Councellor, or Attorney, that is retained by, and ingage for mee in a Suit of Law upon good consideration, that shall prove an Ambo-dexter, disclose the secrets of my cause, play the Ambo-dexter, not give in evidence according to his instruction, mis-plead, or otherwise wilfully, or negligently do, not do, or mis-do any thing therein against the duty of his place, and against his Trust. 11 H. 6. 2. 18. Action upon the Case 7. Lib. Intr. 2. B. sect. 2, 3. 14 H. 6. 18. Croo. 2. 90.

This Action will lye against an Attorney that shall ingage in a Suit for, or against mee without warrant; or that having warrant, shall out of negligence or ignorance, negligently, or wilfully misstarry himself, and mis-manage my cause to my damage. Coo. 7. 1. Dyer. 361. Coo. 6. 9. F.N.B. 95. 20 H. 7. 9.

This Action will lye against my Attorney retained by mee in my cause, that shall make default in my Suit, whereby my Land is lost. Lib. Intr. 2. sect. A. 1. Regist. Orig. 113. 2. That shall mis-plead, i.e. plead otherwise than hee hath authority from mee. Stiles Regist. 4. That shall imparle in a Suite of mine, where the party is mis-named, because he loseth the advantage of the plea. 15 H. 7. 14.

That shall in a real Action against mee by agreement, suffer a Judgement to be given against mee, and the Land to be lost. F.N.B. 96. 95. Coo. 6. 9. But if Judgement be had against mee by default, being in prison, where I have been duly summoned, it is otherwise. Coo. upon Lit. 259.

So it will lye against an Attorney for suing of another man in my name without warrant, or consent of mine so to do, albeit it be upon good cause: And this by an Act of Parliament is made very penal. 8 Eliz. ch. 2. Croo. 2. 88. 7 H. 6. 43. 45. F.N.B. 98. So for appearing for mee, without warrant from mee so to do. 15 H. 7. 14. So for pleading any thing in my cause without warrant from mee so to do. Dyer. 361. So for appearing and confessing of an Action without warrant. 9 Ed. 4. 13. 43 Ed. 3. 20. Regist. Orig. 113. 10 Ed. 4. 9.

So it will lye against an Attorney that shall out-law mee in the name of B. which B. at the time is dead. Coo. 7. 1.

If an Attorney in a Suit in any Court against mee shall unduly proceed in any thing, as enter a Judgement, and take out an Execution, after a non-pros. entred, or the like, and I have any special damage by it, I may have this Action: So if hee shall lawfully procure a Judgement, take out Execution, and cause mee to be arrested and imprisoned. Fitzons Regi. 125. 126.

Serjeant. Attorney.

Sect. 3.

It is said, that this Action will lye for mee against a Serjeant, that being tendred his Fee, refuseth to be retained for mee in a Cause, and so for an Attorney. Nay, some think, if his Fee be not tendred, and he refuse to be retained by mee, that this Action will lye against him; for these Officers may recover their Fees by the Law: But otherwise it is of a Barrister at Law, for he may not sue for his Fee when he hath given advice. by Just. Bridgman, 17 Car.

It will lye against him, that shall get, or pursue a Protection unduly and illegally, to delay my Suit. 15 Ed. 4. 19. 20 H. 6. 10. Regist. Orig. 119. B. Lib. Intr. 492. D. 493. sect. 2, 3. About a Protection.

If one get a Protection for mee, and then give it to another of my name; I may have this Action against him. 30 H. 6. 18. If one get a Protection for a year, and then doth not pursue it accordingly, or remove the Suit, to do such an Act whereby the party is grieved: So where it shall appear by matter ex post facto to be a delay. F.N.B. 97. 20 H. 6. 10. Coo. 5. 34. Croo. 1. last publisht. 794. Delay.

This Action will lye against him that shall procure a Supersedeas for one upon a false surmize, that hee is his Servant, or an Officer of the Court; where in truth the thing pretended is false. 21 Ed. 4. 23. 11 H. 6. 8. So where one shall get a Writ of Privilege, as a Servant to one of the Clerks in Chancery, who is not so. 11 H. 6. 8. and by this my Suit is delayed. 21 Ed. 4. 22. About a Supersedeas. Priviledge.

If a Prohibition be delivered to a man to stay a Suit he hath against mee in another Court, and hee proceed notwithstanding; I may have this Action against him. F.N.B. 92. a. About a prohibition.

If one indict mee, or sue an Appeal against mee in another County than that I dwell in; I may have this Action against him. Stat. 8 H. 6. chap. 10. 6 H. 6. chap. 1. Kelw. 21.

If a Sheriff, or any other Officer, or Minister of Justice, shall not do, or for his Fee refuse to do, or do amisse any thing about his Office to my prejudice; I may have this Action against him. Doct. and Stud. 134. 18 H. 6. 29. Coo. 5. 89. 9. 60. Plow. 48. Against an Officer.

If a Sheriff arrest a man upon a Writ of Mesne process at my Suit, and return a Cepi Corpus, and that the Defendant was rescued; no Action will lye for this, either for mee, or for the Sheriff. But in case where a man is taken upon execution, and so rescued, the Law is otherwise. March. Rep. 1. 16 Ed. 4. 3. Broo. Escape. 37. For hindrance and delay of a man in his Suit in Law. By Rescue or Escape.

If a Defendant be taken in execution at my Suit, and be rescued from the Sheriff; the Sheriff may have this Action against the Rescuers. And so also it seems may the Plaintiff in the Suit. Croo. 1. 77. Dyer. 241. Pasche. 7 Jac. B. R. Kemp's Case. And if hee be arrested on a mean process, as a Latitat, or Capias onely, and another man rescue him, and so hee get away; I may have this Action, and recover the debt and damage against the Rescuer. Hill. 20 Jac. B. R. Hawk's Case. Or I may sue him that made the Arrest, and suffered the escape, were it after an execution. Hill. 20 Jac. B. R. and 7 Jac. B. R.

If the Sheriff suffer his Prisoner in prison at my Suit upon a Capias ad computandum. 15 Ed. 4. 19. 16 Ed. 4. 2. Escape. 37. Or upon a Cap. utlagat. after Judgement. Croo. 1. last publisht. 235. 877. Croo. 1. 33. Or upon a Capias on a Statute Merchant. F.N.B. 93. A. Regist. Orig. 93. Or upon an Execution. Lib. Intr. 8. C. sect. 1. Croo. 1. 147. Or upon a Cap. ad satisfaciend. 14 H. 7. 10. 21 Ed. 4. 1. 34 H. 6. 6. to escape, whether willingly, or negligently, if hee break away, and bee not retaken on a freh pursuit before my Action be brought; I may have this Action against him for this. 15 Ed. 4. 23. Coo. 4. 93. Coo. 2. 52. Croo. 1. last publisht. 910. 893. And so it seems the Law is upon the escape of a man taken at my Suit upon a Capias Utlagatum, before Judgement. Croo. 1. last publisht. 910. 767. 652. but the Suit on the Cap. utlagat. must be in mine, and the Kings name together. Croo. 2. 533. By Escape, Sheriff.

This Action will lye against a Gaoler that suffers one to escape that By Escape, the Gaoler,

is committed to him upon the Statute of Labourers. 14 H. 6. 8.

If a Sheriff have one in his prison, in execution at my Suit, and he, under pretence of an authority (that is not good) deliver him out of prison; I may have this Action against him. Croo. 1. last publisht. 893.

Some have held also, that this Action will lye against a Sheriff, Gaoler, or other such like Officer, that shall suffer one, taken upon an ordinary processe, to escape. Brownl. and Goldsb. 15. Regist. 111. A. B. Croo. 1. last publisht. 289. 280. And so the Law seems to be; but not upon a Rescue, unlesse it be in a Case of Execution, or Cap. in lagarum. Croo. 1. last publisht. 53. For there the Plaintiff in the Suit may have this Action against the Rescuers. For if a man be arrested at my Suit, and another man rescue him, and so hee get away; in this case I may have this Action, and recover the debt and damage against the Rescuer. Hill. 20 Jac. B. R. and 7 Jac. B. R. Hawk's Case. Or I may sue him that made the Arrest, and suffered the escape or rescue, at my choice; And he shall have this Counter Remedy against him, or them that made the Rescue: And this is the proper Action to be had against the wrong doer. Hill. 20 Jac. B. R. Croo. 2. 289. 360, 361. And yet see Popham. 190, 191. whereby it doth appear there be different opinions in it.

By Rescue.

By Escape.

If a prisoner of himself escape, against the will of the Sheriff, or Gaoler, that have him in custody; it seems this Action lyes for the Sheriff, or Gaoler against him. F. N. B. 95. C. 130. B. For hereby the Sheriff or Gaoler is brought in danger to pay the debt: And the Sheriff may have this Action against the Prisoner that hath made his escape from him after his Arrest, before hee himself is sued by the Plaintiff in the Suit. Croo. 1. last publisht. 50. 235. 13 H. 7. 2. 14 H. 7. 1. But if the Sheriff have mee in execution, and carry mee prisoner into another place out of his Jurisdiction; this is a discharge of mee, and the Sheriff cannot take mee again, or if hee do, I may go away, and hee can have no Action for this. Croo. 1. last publisht. 293.

If a Prisoner escape by the Sheriff, or Gaolers means, either wilfully, or negligently, that the escape be voluntary, or negligent; the Plaintiff in the Suit will have this remedy against him by this Action. And if the escape be involuntary, and against their will; yet then they will be subject also to the Plaintiffs Suit; but in this case the Sheriff or Gaoler, will have his Counter-Action and Remedy against the Prisoner escaped. Croo. 1. 77. 7 H. 4. 14. Broo. 34. Croo. 1. last publisht. 349. Croo. 2. 289. 360, 361.

For any Misfeasance.

If a prisoner rescue himself, the Sheriff will be chargeable, as if others rescue him, processe shall go against the Rescuers to punish them; but the Plaintiff will have his remedy against the Sheriff. Croo. 1. last publisht. 868.

Nota.

It is a Rule, That if a Sheriff, or other Ministerial Officer of any Court, shall make a false Return, or shall otherwise mis-demean himself by any Non-feasance, or mis-feasance whatsoever, and I have any special damage by it; I may have this Action, but not unlesse I have some special damages: And therefore all the Cases here that speak of Officers in general, are to be understood of Ministerial, and not of Judicial Officers, for if they mis-demean themselves in their Offices, some other way must be gone for relief by him that hath damage by it. Croo. 1. last publisht. 730. Bulst. 2. part 265. 338. 235. 12 H. 6. 3. 2 R. 3. 9. 12 H. 6. 3. See chap. 15. sect. 5. case 16. 34. 36.

For not execution of a Writ, &c. By an Officer, Sheriff.

Sect. 4.

If a Sheriff, or other Officer hath a Writ to arrest a man, at my Suit, and I shew him the man, or hee is in his company, and doth know him

him to be the man; I may have this Action against him, 14 H. 7. 27. Croo. 1. last publisht. 173. Albeit it be the Sabbath day, and I give him the Writ against the man that is there in the place. Coo. 5. 89. 9. 60. Plow. 48. and by three Judges. Pasche. 18 Jac. Noys Rep. 89.

So if I offer a Writ to a Sheriff to arrest a man at my Suit, and hee refuse him, especially if I offer him his Fee with the Writ. Bulstr. 3. 206. So where hee hath a man in execution at another mans Suit, and I deliver him an execution at my Suit against the same man, and he doth not execute it. Croo. 1. last publisht. 873.

So where hee neglects to do any other thing hee hath authority to do, and ought to do for mee, by which I suffer damage. Croo. 1. last publisht. 175.

If special Bayliffs have a Processe to serve for mee, and they come where the party is, and take money of him, and do not arrest him; it is probable I may have this Action for this.

If a Sheriff, or other Officer shall not return, or shall refuse to return any Processe in due time delivered to him, when hee hath executed it according to the duty of his office. 42. Ass. 12. 8 Ed. 3. 3. 21 Ed. 3. 43. 10 *H.* 7. 23. Or where hee hath not executed it. 2 H. 6. 5. 8 Ed. 4. 14. 42. Ass. 12. Coo. 5. 32. Croo. 1. last publisht, 179. 873. — For not returning of it when it is executed. By an Officer, Sheriff.

If a Sheriff arrest a man upon a Capias utlagatum at my Suit, and do not return the Writ; yet it seems no Action will lye for this, but hee is to be amerced onely. Croo. 1. last publisht. 873.

If a Sheriff deliver a distresse upon a second deliverance, and not return the Writ, by which hee doth it. 22 Ed. 3. 43. 2 Ed. 3. 33.

If a Sheriff shall not put his name to the Return of a Venire facias in a Suit of mine, and by this the Judgement is reversed for Error; I may have this Action against him. Brownl. 1. part 12. 50.

If special Bayliffs, that are not known Officers, when they have executed a Processe shall keep it, and give no account, nor make return of what they have done; it seems this is actionable.

If the Clerk of the Assizes shall take his Fee for entring a Jury upon Record, and not do it; this Action lyeth. 34 *H.* 6. 4. — Clerk of Assizes.

If a Sheriff, or other Officer, shall mis-return any Processe or Writ sent unto him; this Action will lye against him. Doct. and Stud. 134. B. 18 H. 6. 29. See chap. 15. sect. 3. 7. 15. 24. 27. So for any false Return of his, in, or out of a Suit. F.N.B. 95. Coo. upon Lit. 259. Coo. 6. 9. 32. Dyer. 358. Croo. 2. 561. F.N.B. 97, 98. — For mis-return, or for other mis-doing in these things. By an Officer, Sheriff.

As where hee shall return mee summoned, and thereby Judgement is given against mee by default, and in truth I was never summoned, or not in due time; here I may have this Action against the Sheriff, and against the Summoners, &c. But some say this Action will not lye after the death of the Summoners, Ceptors, and Pernors; The same Law is upon a Garnishement. 2 Ed. 3. chap. 14. 112. B. Regist. Orig. 12. 8 H. 6. 1. 6 Ed. 4. 3. 8. 26. Ass. 48. 30 Ed. 3. 37. 26. Ass. 48. So where hee shall return one summoned, that re vera is dead. 8 Ed. 3. 330. pl. 1. Mich. 11 Jac. B. R. Poles Case. Where hee shall return a Nihil upon mee, where I have Lands, by means whereof I am after taken by Capias. N. B. 93. B. Lib. Intr. C. sect. 2. — Summons.

So where the Sheriff shall return mee 5 exactus, and in truth it should have been 4 exactus. 9 H. 6. 60. 81. Croo. 1. last publisht. 512. So where hee shall out-law a man, and not proclaim him according to the Statute of 10 H. 7. chap. 23. Croo. 122.

So if the Sheriff shall return a Non est inventus, where it is not true,

true, and thereby the party is damnified. F. N. B. 39. 31 Ed. 3. Processe. 55.

But if the Sheriff have a Fieri facias against my goods, and send his warrant to his Bayliff, to execute it, who doth so, and the Sheriff make a false Return; the Bayliff is not to be charged for this. Croo. 1. last publisht. 190.

And where the Sheriff shall make a false Certificate, in some Cases hee may be sued for this, as for the false Return of a Processe. Coo. 11. 94.

If a Sheriff take ones goods in execution for mee, and after deliver the goods again to him, and make a false return to cover the matter; I may have this Action against him. Stiles Rep. 431.

So if the Sheriff shall make another Return to the Court, than that which the Bayliff of the Franchize doth make to him. 36 H. 6. 1. 30. Ass. 5.

So if a Sheriff upon a Fieri facias at my Suit take a mans goods, and a new Sheriff being made, the old Sheriff delivers back the goods to the party, and indorse nulla bona upon the Writ of Fieri facias. Stiles Rep. 474.

So if the Officer shall return Cattle, estrayed, which are dead. Leonard. Rep. pl. 203. 32 H. 6. 27.

If the Sheriff upon a Capias, where hee hath sent his warrant to the Bayliff of a Liberty to arrest, which is done accordingly, and the Sheriff knowing it, notwithstanding return a Non est inventus; this Action lyeth. But if hee had returned that hee had sent to the Bayliff, who had returned that hee had arrested him; this had been good, and the Sheriff discharged. Croo. 1. last publisht. 729.

In return of a Juror.

So if the Sheriff shall return a man of an Enquest, where hee hath shewed him a Charter of Exemption. 18 H. 8. 5.

Franchize.

If the Sheriff, or other Officer shall break into my Franchize, or Liberty, to execute his Processe without my leave; I may have this Action against him: But the execution made is good, and may not be avoided. F. N. B. 95.

Sheriff.

So if the Sheriff return a Devastavit against mee that am Executor, &c. and this is false: so if hee execute the next Writ de bonis propriis, if re vera there were no Devastavit. Lib. Intr. 11. A. 11 H. 6. 37. B. Coo. 5. 32. Coo. 5. 32. So if hee return nulla bona upon a Fieri facias.

Sheriff.

So if the Sheriff quash Essoines of the Plaintiff in a Replevin Ettonice, without assent of the Suitors. 20 Ass. 45. But if it be with their consent, false Judgement lyeth. 26. Ass. pl. 45.

Sheriff.

If the Sheriff return a Cepi Corpus, and have not the body at the day, it seems the Plaintiff in the Suit may have this Action against him. Croo. 1. last publisht. 460. 624. Yet see 7 H. 4. 31. Processe. 120.

So if hee return a Languidus, and not a Cepi Corpus, where the party is in health; the Plaintiff in the Suit may have this Action. 11. H. 6. 43. pl. 39. 2. H. 6. 5. A. 21 H. 6. 5. A.

So if the Sheriff that was before, hath returned one sufficient, which was not sufficient, by which that is present is charged with Issues; he may have this Action against the quondam Sheriff. 19 H. 6. 38. per Paston.

If the Sheriff upon a Latitat arrest a man, and then bail him according to the Statute of 23 H. 6. and notwithstanding return languidus in prisona; it seems no Action will lye for this. Croo. 1. last publisht. 8[illegible] Adjudged. And if hee rescue himself here, this Action will lye for the escape. Croo. 1. last publisht. 868.

So

So if the Sheriff shall make his precept to execute a Processe to one that is no Bayliff of a Franchize, and by this the suit is delayed; the Plaintiff in the suit may have this Action. 38. Ass. 13. Sheriff.

If the Sheriff return a false Enquest of Office; no Action will lye against him, or against the Jury for this. Coo. 5. 32. Sheriff.

If the Sheriff in a Writ of false Judgement, returned there is no such thing, &c. this is actionable. 44 Ed. 3. 3. pl. 11. Sheriff.

And yet it is said, That no Action upon the Case shall lye against a Sheriff, for the taking of an insufficient Bail in this Action, for mee, in a suit I have against another man. Hutton's Rep. 120.

This Action will lye against a Bayliff of a Franchize, that sues after the Plaint is removed, and for the discontinuing of his plea, &c. F.N.B. 93. E. 14 Ed. 3. Action upon the Case. 9. Bayliff of a Franchize.

So if hee, after hee have distrained the Defendants goods at my suit, hee shall deliver back to the Defendant his goods again. F. N. B. 93. F. 2 Ed. 3. 43.

If a Procurator, Sonner, or Apparitor, return mee summoned when it is not done, and by reason of this I am excommunicated, &c. or Judgement of Excommunication is had against mee; I may have this Action against him. Bulstr. 2. 264, 265. Coo. 12. 128. So if an Ordinary wrongfully excommunicate mee for any thing out of his Jurisdiction. Doct. and Stud. 118, 119.

If a Comissary shall return a Jure patronatus, otherwise than it is found, this Action will lye for it. 22 H. 6. 30. Comissary.

If an Escheator had made a false Return of his Office against mee, I might have had this Action. So if hee make a Return of an Office where no Office is found. 21 Ed. 4. 23. 27. 9 H. 6. 60. Regist. Orig. 115. B. And so for any other such like Officer. Croo. 1. last publishr. 510. Escheator.

If any one shall take out an Execution in any Court upon Record, in a case where hee knoweth the Record to be removed, by a Writ of Error, into another Court; the party grieved hereby it seems may have this Action against him. Trin. 39 Eliz. Co. B. Willis and Scrowd. By another. Sect. 5.

If any man shall procure a nihil dicit to be entred in abuse of the Court, whereby the Defendant in the Action doth suffer damage; this Action lyeth. Croo. 1. last publishr. 794.

It will lye in some Cases, for hinderance of a suit by a remove of a Record by Attaint. Regist. Orig. 113. A.

If one, not returned of a Jury, shall raise himself to be sworn in the name of one of the Jury, and give his verdict with the rest; either of the parties may have this Action against him. March. pl. 32.

If one shall remove a Plaint out of my Court of my Manor, out of a cause; I may have this Action against him for this. 21 H. 6. 4.

This Action will lye against a Sheriff, Attorney, or his deputy, or Clerk of the Court, for imbezelling of any Record, by him that hath any special damage by it. 7 H. 4. 26. 19 H. 6. 79, 80. Imbezelling of a Record.

If a witnesse in any Court in a Cause there against mee, shall make a false Oath in any cause against mee, whether he come to mee, or with out Processe; no Action will lye for mee against him for it. Croo. last publishr. 529. Coo. 4. 14. Mich. 38, 39 Eliz. Co. B. Adjudge of Hampert's Case. Mich. 18 Jac. B. R. Farrer's Case. Witnesse, for a false Oath.

If I serve a witnesse with a Subpena to appear in a suit for mee, and tender him his reasonable charges, and he doth not appear, and I have prejudice by it; I may have this Action against him. Bridges Regist. 10. For not appearing.

This

By disturbance of an Officer in the doing of his Office.

This Action will lye against mee that shall disturb an Officer in the doing of his Office, as in the attatching, or distraining of goods. N.B. 101. F. And this lyeth either for the Officer, or for the Plaintiff in the suit. N.B. 102. F. And either of them may have it.

If one hinder an Officer in doing of execution in his Office in my suit; as where the Sheriff shall come to another mans house, where the goods of the Defendant are, and the dwr of the house being open, another man, not the owner of the house, doth shut the dwr, and keep him out; or the owner of the house; or another man, shall convey away the goods, and so prevent my Execution; I may have this Action against him: But if a man do so in his own house, or to prevent the execution upon his own goods, doth this; no Action will lye for this. Croo. 1. last publisht. 308, 309. Coo. 5. 91. New B. of Entries. 13. Hill. 20 Jac. B. R. Wood's Case. Adjudged.

If I have an execution against the goods of I. S. and hee hath goods in the house of K.L. and the Sheriff comes to the house, and tells K.L. what hee is, and wherefore hee comes, and desires him to open the dwrs to him, and hee keeps him out, that hee cannot do execution; I may have this Action against K. L. for this. Coo. 5. 93. Seamaine's Case.

If I have a Judgement against an Executor, and hee shall secretly and fraudulently make away his goods, to prevent my Execution; I may have this Action against him. M. 2 Car. 1. B. R. per Curiam.

If an Officer be coming to arrest a man, or attatch his goods at my suit, and another man convey away the goods, or the person, so that the Officer cannot do his work; I may have this Action against him; and so it seems may the Officer also. F.N.B. 102. 21 H 7. 40. 18 Ed. 3. 3. See more, chap. 15. sect. 5, 6. throughout.

Against an Officer.

If a Replevin be duly sent to a Mayor to command him to accept of pledges of A. the Plaintiff in a Replevin, and to deliver his Cattle, &c. and hee instead of taking pledges, takes money for security; for this the party grieved may have this Action. Croo. 1. 322.

Bayliff.

If a Bayliff shall attatch a Defendants goods, and then deliver them back again to him; I may have this Action that am Plaintiff in the suit. F.N.B. 92.

If an Officer arrest mee, and I offer him sufficient bail, and hee refuse it; and keep mee in prison afterwards; I may have this Action against him, and also against the Plaintiff, if hee have any hand in it. Croo. 1. part 1. 21. 240. But no Action will lye against a Sheriff, or his Deputy, for taking bail of a man in prison upon a Latitat. Croo. 1. last publisht. 671. 281.

Guardian of an Infant.

If a Guardian that is to sue for an Infant, be false to him, plead a false plea, poucheth one that is not sufficient, or the like; the Infant may have this Action against him. Dyer. 361. Kelw. 135. 9 Ed. 4. Action, &c. 121.

If an Infant be bound for another, and a stranger without his privity causeth a suit to be commenced upon it, and procureth an Attorney to appear to it, and so Judgement is had against the Infant; hee may have this Action for this practice. Croo. 2. 694.

If a Bayliff arrest mee without warrant; I may perhaps have this Action, as well as of Trespasse for the false imprisonment. Lane's Rep. 68.

Contempts.

If I serve mee with a Prohibition to stay a suit hee hath against mee, and hee doth throw it in the dirt; I may have this Action against him. F. N.B. 92 E. Regist. Orig. 92.

If

If the Sheriff shall proceed in his Court in a Cause after it is removed, into another Court. F.N.B. 99.

If one shall proceed in a Court Christian, after a prohibition delivered to him to stay a Suit against mee; I may have this Action against him. And so for any thing in a Spirituall or Ecclesiastical Court, of wrongful proceeding in the Judge, or of mis-feasance, non-feasance, or falsity in a Minister of the Court, of unjust prosecution in the party, where any man hath a temporal damage by it; the party grieved may have this Action in a Temporal Court, to recover damages. Coo. 12. 128. 47 H. 6. 8. 26 H. 8. 3. F.N.B. 92.

If one, to delay my suit, shall get, or use a Writ of Priviledge, or Protection, or the like Writ, so as onely to make a delay to my suit thereby; I may have this Action for the delay. So if an Essoiner cast an Essoine, and warrant it not at the day; the demandant that is hereby delayed may have this Action against him. Broo. Discrit. 40. 11 H. 6. 8. F.N.B. 97. 20 H. 6. 10.

If I be going to distrain upon Land for my Rent, or damage-feasant, and another to prevent mee of my distresse, shall drive the Cattle off the ground. Coo. 5. 91. Finches Ley. 200. Hill. 20 Jac. By Justice Haughton.

Vexatious Suit.

If there be two suits against the same person in the Kings Bench, and I am bail for him in one of them, but not in the other: And the Plaintiff in the other suit by his mis-information, and some malicious and undue practices makes mee chargeable, and brings mee into trouble, as his bail in that suit; for this wrong I may have this Action for my remedy, as I may have for casting a Protection without cause, or procuring a false suit to be brought in anothers name; and in like cases, where a man knowingly and deceitfully shall bring another into any trouble, by misawarding of Processe, and the like, in a suit, by which another man is damnified. Croo. 1. last publishr. 639. 17 Ed. 3. 51. 20 H. 6. 21. 27. Ass. 75.

Suit in anothers name.

If one sue another in my name without my privity, I may have this kinde of Action against him, upon the Statute of 8 Eliz. chap. 2. And herein I shall recover ten pound: And the party sued and grieved also, may recover by such a kinde of Action as this, his treble damages. Croo. Rep. 2. 88.

For suing in anothers name. Sect. 6.

If one sue mee in anothers name, without his privity, though it be upon good cause; I may have this Action against him, if I have any special damage by it. March. Rep. pl. 76.

Vexatious Suit.

If two be bail for another in the Kings Bench, and after Judgement had, the Principal doth render himself to discharge the Bail, and yet the Plaintiff (knowing this) or his Attorney, doth maliciously take out execution, and vex either of them as Bail still; the party so vexed may have this Action. Croo. 2. 667.

Deceit in giving Bail.

If one by practice in London put in ill and false bail to discharge the bail in being; this may be actionable. Croo. 2. 602.

False Return by a Sheriff.

If the Sheriff upon a Latitat at my suit arrest the Defendant, and at the day of appearance return Cepi corpus & paratum habeo, &c. and hee hath bailed him according to the Statute; no Action will lye for this, for it is justifiable if hee plead it; but if hee plead it not, the Action will lye. Croo. 1. part last publishr. 460. 624.

But if one owe mee mony on an Obligation, and I deliver a Latitat to the Sheriff, and tell him, my intent is to declare on that Obligation; and the Sheriff arrest him upon the Latitat, and then let him go, without taking of any reasonable bail for his appearance according to the Statute;

Escape.

Statute; I may have this Action against the Sheriff. Croo. 1. last publisht. 729. 730.

If one sue another that came into a Court against mee, and gave evidence that I was a common lyer, and so recorded in the Starre-Chamber, and upon this, very small damages was given in a suit, wherein I did use this witnesse; this will not bear an Action. Brownl. 1. part 2.

Vexatious suits. If one take out a Latitat against mee, and arrest mee, and refuse bail, and carry mee away into another Liberty, to charge mee with another Action there; I may have this Action. Stiles Rep. 343.

It was said by Rolls Chief Justice, That this Action will lye against him that shall bring any vexatious suit against another, or for entring of Actions of a great value to force his adversary to put in a great bail, where hee hath but small cause of Action. Stiles Rep.

If one hath a verdict against mee in a cause, and hee, to the end I may be in custody, till hee have judgement and execution, and for no other cause, arrest mee; I may have this Action for my remedy. Stiles Rep. 211.

This will lye against my Attorney for taking out a Fieri facias in my Adversaries suit, and causing it to be executed against his Trust, &c. Stiles Rep. 426. See chap. 15. sect. 5. throughout.

If the Sheriff be to take the person or goods of another for mee, and I direct him to the person or goods of another by mistake, or purposely, and the Sheriff doth thereupon take them, and be afterwards sued for it (as hee may be) it seems hee may have this Action against mee for this mis-information. Lanes Rep. 52.

By Rescue, or Escape. Sect. 7. If I have arrested a man upon a Latitat, and hee put in bail, and appeart, and I have judgement against him. and hee, to discharge his bail, doth render himself in Court, and is committed to the Marshal, and he suffer him to escape; I may have this Action against the Marshal. Stiles Rep. 330.

If one be arrested upon a Latitat at my suit, and delivered over by the Sheriff that arrested him, to the next Sheriff, and hee suffer him to escape; I may have this Action against this next Sheriff. Croo. 2. 380.

If one be arrested at my suit upon a Bill of Middlesex, and the Bayliffs suffer him to escape, and I, by reason thereof, am like to lose my debt; this Action may lye in this Case: But if hee be violently rescued and taken from the Bayliffs, before hee come to the Gaol; no Action will lye against the Sheriff, or them, for this; And so where it is upon other mean Processe; but the Plaintiff may have this Action against the Rescuers: And therefore upon such a Processe the Rescous is a good return, and that hee was not found after in his Bayliwick; and upon this Processe shall go against the Rescuers: But if it were upon an execution it is otherwise, for there the Sheriff may take the posse comitatus, to keep him, and therefore when hee hath him, hee must look to him: And so if the prisoner be once in the Gaol, the Sheriff at his peril must keep him, and a Rescous from thence is no excuse to him. So upon a Cap. ad Sat. or Cap. utlagatum after Judgement; such an excuse is no excuse either against the King. Croo. 2. 380. 419. 485. And yet in all Cases where the Arrest is unlawful, the Escape or Rescue cannot be actionable. Croo. 2. 485. Trin. 14 Jac. Probe and Maine's Case. Mich. 2 Car. 1. Lemoson and Dickson's Case.

If one arrested upon a Latitat at my suit shall be rescued by any man, out of the hands of the Sheriff, his Deputy, his Bayliffs, or the Bayliffs of

of a Franchise, or his Deputies hands; I may have this Action against the Rescuers. Croo. 2. 241, 242. So if the Sheriff take a man in execution upon a Cap. ad Sat. and suffer him to be rescued, and escape, Godb. Rep. 145. Hetleys Rep. 95. But upon a mean Processe it seems to be otherwise. And if it be upon an execution after Judgement; the Action will not lye for the Plaintiff against the party, but against the Sheriff. Godb. pl. 145. Hetleys Rep. 95.

If A. be sued in the Kings Bench by B. for three hundred pound debt, and is taken upon a Latitat, and C. rescue him from his imprisonment, B. in this case, by this Action shall recover all his debt in damages, let A. be never so sufficient. Adjudged. Affirmed in Error. 7 Jac. Kent and Keileway. Scaccario. Jenk. Century. 7 Case 10.

An Action of the Case will not lye against a Sheriff, for suffering a Prisoner arrested upon a Latitat, or other mean Processe to escape, as it will for suffering a man arrested upon a Capias ad satisfaciend. or Capias in lagatum; for it will be a good plea in that case to say, that as hee was bringing the prisoner to Gaol, that hee was rescued from him, and that hee hath returned the Rescuers. Bulstr. 3. 198. Fitz. N. B. 102. But if the Sheriff shall bring him into the Gaol, and thence suffer him to escape; for this it will lye. Bulstr. 3. 198. F.N.B. 102. And the Plaintiff in the suit in the first case may have this Action against the Rescuers. Bulstr. 3. 200, 201. See more, chap. 15. sect. 5. throughout.

About an Oath. Sect. 8.

If a man take a false Oath against mee in a Proper Court, whether hee come with, or without Processe in any suit of Law there, or he come in as a witnesse upon an Affidav. no Action will lye for this, as some say; albeit I be prejudiced by it, for it is an Act of the Court, and in a Course of Justice. M. 38, 39 Eliz. Co. B. Adjudged. Damports Case. Mich. 18 Jac. B. R. Eyres Case. Coo. 4. 14. Owens Rep. 158. Dyer. 243. But see the contrary in Coo. 12. 123. where it is said to be resolved, That for Perjury by which damages accrew to mee, I may have this Action; and therefore for Perjury in a cause, as a witnesse, or otherwise upon an Affidav. as where one as a pledge did affirm in his Oath, that he could spend forty shillings a year, and upon re-examination confessed it false; and where by the Affidav. a man is arrested and molested by processe of contempt, or other damage follow to mee by it against whom the Oath is; I may have this Action, and especially there where his Oath is voluntary. Croo. 2. 602. And so it seems the Law is, and yet adjudged otherwise. See it Croo. 1. last publish. 521. If a Damatoner retken one summoned, and thereupon hee is pronounced Contumax, and afterwards excommunicated; hee may have this Action for his damage, albeit the thing be in a Spiritual Court. Coo. 12. 148. And so for any thing in a Court Ecclesiastical of wrongful proceeding, of the Judge, or non feasance, or mis-feasance, or falsity of the Minister, or by unjust prosecution of the party, the party grieved shall recover damages in the Temporal Court by this Action.

Proceeding in a Spiritual Court.

For an unjust prosecution in a Sessions about a Bastard childe.

If one endeavour to charge mee at Quarter Sessions to be reputed father of a Bastard-childe, and procure an Order to be made against mee, as the reputed Father to keep the childe, and all maliciously and unjustly I may have this Action for this: But not for an endeavour to do it without an Order. Bulstr. 1. part 343.

About some other offence.

If one procure another falsly and maliciously, to indict mee, or cause mee to be arrested, imprisoned, bound over, or arraigned for an offence, without any colour, or cause of suspition; I may have this Action against him. Mich. 4 Jac. B. R. Marsham's Case adjudged. Trin. 17

Jac. B. R. Olivers Case. M. 7 Jac. B. R. Gambels Case.

To binde to the good Behaviour upon Articles.

If one exhibit Articles to a Master of the Chancery, to have the good Behaviour, and then wave that course, and after sue in the Kings Bench, and hath Processe thence upon the Articles in Chancery; for this latter Act, I may have this Action. Godb. Rep. pl. 333. Mich. 21 Jac. Co. B. Bundley.

CHAP. XI.

Of an Action upon the Case against a Hundred upon a Robbery, where it will lye, or not. 5 Ga. 1. 60, 72, 73,

If I be robbed in my Travel; I may recover my losse in damages from the hundred by an Action in the nature of an Action of Trespasse on the Case, upon the Statutes of 13 Ed. 1. chap. 1, 2. and 28 Ed. 3. chap. 13. 27 Eliz. chap. 13. But for the further opening hereof, these things are to be known,

1. That if the money be taken out of a Portmantle, carryed by the Post-boy, and the owners hand upon the cap of the Portmantle; this is a Robbery of the owner; so is the Robbery of the Servant in the Masters presence. Stiles Rep. 318, 319.

2. That this Action may be brought by Bill, or by Original. Stiles Rep. 215. contra, Go. 143.

3. That wheresoever this Action is maintainable, there must be these things in the Case; or thus it must be,

Notice.

1. The party robbed must with all the speed hee can give notice thereof to the Hundred, and make Hue and Cry after the Theeves at the next Village (be it in the same, or in another Hundred, or County) and to some of the Inhabitants dwelling in, or neer the place where the thing is done. Noys Rep. 155. And herein it is most safe for him to give notice to the Inhabitants on that side which way the Theeves do flye, and to give notice to many of the neighbourhood. And yet see Goldsb. 56. 62. Croo. 1. part 29, 30. 275. that it seems this is not needful. See for this, Croo. 1. 29. And if the Robbery be in Devisis Hundredorum, there he may give notice to either of them, and it will be well enough. Croo. 2. 675. And notice given in the Hundred five miles from the place, is good enough. March. Rep. 11. And by the Chief Justice, notice given at one Town, and Hue and Cry at another Town is good. March. Rep. 11. And notice given to the next Village forward in the Road, is good, although it be in another Hundred, and although there be another Village a-before, neerer in the same Hundred. Noys Rep. 52. And if one ask him, what ayls him, and hee shall say, hee is robbed; this is a good notice. Noys Rep. 155.

And if the Hundred of A. and B. be adjoyning, and the Robbery is done in the utmost confines of A. and the party not knowing the Country, goes to B. and there gives notice; this is sufficient. Noys Rep. 155. See Leonards Rep. pl. 73.

2. That hee must bring his Action against the Hundred for it within a year after the Robbery is done, but not till forty dayes after the Robbery is past.

3. That he must within twenty dayes next before the Action brought, and Teste of the Original writ be examined upon Oath, before one of the next

next Justices of the Peace of the County in, or neer the Hundred, whether hee knoweth any of the parties that robbed him; and if hee doth know any of them, then before the Action brought, hee must be bound by Recognizance before that Justice, effectually to prosecute them: And this Oath the Servant that is robbed of his Masters money, may, and must himself take, and not the Master, if hee be not there; and the Master may bring the Action, but hee is not to be sworn. Croo. Rep. 1. part 26. 244. Croo. 1. 154, 155. 245. Croo. 1. last publisht. 142. And in the taking of his Oath, let him swear hee doth not know the parties that robbed him, nor any of them. Noys Rep. 21. pl. 456.

4. That the Robbery must be done in the day time, for if it be done after the night is come, and before the day (as some say) no Action will lye for it. Yet see Goldsb. 56. pl. 10. 61, 70. Croo. 1. last publisht. 270. Croo. 2. 206. If after day light, before Sun rising, and whilst day light is after Sun set, or at any time of the night, wherein men use to travel; the Hundred shall be charged.

5. That the Robbery must be upon the high-way; for this Action will not lye for relief upon a Robbery done in my house upon mee.

6. That the Felons must be fled; for if any of them be apprehended, although it be by the party himself that is robbed; this Action will not lye: But pursuit after, without taking of them, will not excuse the Hundred.

7. That it must be a Robbery on the person: for if a man have tyed his Horse to a hedge, and he gone aside to untrusse a point, and the while the Thief take away his Cloak-bagge; or a Carrier be behinde his Horses, and not neer them, and his Packes be robbed before hee come to them; this Action will not lye for this.

8. That if my Servant, or Carrier be robbed of my money, or goods, I my self may bring the Action; either Master or Servant may bring the Action, and hee that brings it first shall prevent the other of bringing of it: And my Servant, or the Carrier may be examined upon Oath; and if the Carrier will not be examined, I have no remedy; and in these cases a man may be a witnesse in his own Case; but a man must make a clear proof of it, that hee, or the Carrier had so much goods, or such money as hee pretends to lose. Croo. 2. 224. Latch. Rep. 127.

9. That in the Case of a Carrier, if hee be robbed of my goods, either hee, or I may sue, unlesse the Case be such, as hee is not answerable for the losse; as where hee undertook the charge of them upon an especial agreement, to keep them as his own, or the like. Croo. 2. 224.

10. That if one of the Thieves be not apprehended within forty dayes, it seems the Hundred is chargeable.

11. That if the Robbery be made between two Hundreds, both the Hundreds and the Franchises within them shall be chargeable for it.

12. That if the charge light upon any particular persons within the Hundred, they are not to be relieved by way of contribution from the whole Hundred: But the Justices of the Peace are to over it upon the whole Hundred, when the execution comes.

13. That if any default have been in the following of the Hue and Cry, by any other Hundred, the Hundred charged with the Robbery may recover half their damage again of this Hundred for their default.

14. That although the party robbed be negligent to pursue, and refuse to lend his Horse to make Hue and Cry, so that convenient notice might be given to the Hundred; this will not prejudice his Action.

15. That albeit the party robbed do not know the Thieves at the time,

time, and doth take his Oath that hee doth not know them, and after he come to know them, and confesse it, yet this will not prejudice his Action.

16. That notice given in the Hundred, albeit it be five miles from the place of the Robbery, is sufficient; But if it be in another Hundred, and there onely, it is doubtful. Goldsb. page 56. 58.

17. That notice given in one Town, and Hue and Cry made in another Town, is good enough.

18. That he that is Servant to, or Receiver of another mans mony, may in Case where hee is robbed, bring this Action as well as the Master.

19. That if a Carriers Son, or Servant conspire to rob the Carrier, and do rob him, the Carrier, not being privy to the conspiracy, the Carrier may have his Action against the Hundred upon the Statute. But this matter is to be urged upon the Jury upon the tryal for mittigation of damages, per Chief Justice Rolls; sée for all these things. Croo. 7. 7. Plow. 128. Dyer. 370. In March. Rep. 10. pl. 28. Goldsb. 24. pl. 3. Brownl. 1. part 155. Trin. 21 Jac. Fosters Case. Croo. 1. 26. 29. Sir Io.

20. That if the Master, where the Servant, his Receiver, or friend used by him, is robbed, shall not be bound to take his Oath, that he knoweth none of the Theeves, but the Servant is to do it: And the Master may bring the Action, and bring the Servant as a Witnesse. Croo. 1. 26. Goldsb. page 24. March. 11. Sir John Comptons Case. or (as it seems) that the Servant either may bring the Action. Goldsb. 24.

21. That if a Robbery be committed (as before is said) in the morning before day, or in the evening after day, in any time of the night, in which men use commonly to travel; it is said the Hundred shall be answerable for it, but if it be at twelve, one, two, or three of the Clock in the night, at which time every one is intended to be in his bed, the Hundred shal not be charged with it. Croo. 1. last publishit. 270. Croo. 2. 106. Brownl. page 70. Leonards Rep. pl. 72. It is clear for a Robbery done before Sun rising and after Sun setting, by clear day light; the Action lyeth, but in Crepusculo, and in the night it seems otherwise. Stiles. 233.

22. That if the Robbery be done on the Sunday morning, in time of Divine Service, if Hue and Cry be made, and all the rest done, as it ought to be notwithstanding the time, the Hundred will be charged for the mony, to the party robbed. Croo. 4. 496. contra, 29. car. 2. cap.

23. That if a stranger make Hue and Cry, or pursuit, so that the Théeves are taken, without any thing done by the Hundred, it seems the Hundred is discharged; but if there were more than one of them, and one onely is taken. Quere Goldsb.

24. That if the party robbed dwell within the Shire or Hundred, where the Robbery is done; it seems the Hundred is not to be charged for it. Goldsb. page 55. 2 Rol.

25. It seems the party robbed himself is not bound to send out any Hue and Cry. Goldsb. page 56. 60. For the fresh suit is to be made by the Hundred; and if the man be slain, or bound two or three daies, that he cannot make fresh suit, yet he shall have relief by this Statute. Goldsb. page 60, 61.

26. That if one have mony, and the Théeves take him in one Hundred, and carry him into another, and there rifle him; this shall not bee a Robbery in the first, but in the second Hundred; As if they take a Carrier in one Hundred and lead him, his Horse and Packs into another Hundred, and there rob him: But if the Carrier lead the Horse himself into the other Hundred; there the Robbery shall be said to be in the last Hundred, Goldsb. page 86. Hale. 125.

27. That

27. That in the account of a year, upon the Statute of Hue and Cry, the day of the Robbery is excluded. Hobb. 184.

28. That albeit there be a negligence in him that is robbed to pursue the Robbers, or he refuse to lend his Horse to make Hue and Cry; this will not excuse the Hundred, if convenient notice be given to the Hundred. Noys Rep. 155.

29. That if the party robbed know not the Robbers at the time of the Robbery, and so take his Oath, albeit he come after to know them; this will not take away his Action.

30. That if the party robbed knows the Robbers, her shall be bound to prosecute, and yet also have his Action against the Hundred, if the Robbers be not taken. Noys Rep. 155.

31. That if a Carrier be robbed, and his Man, or his Son have a hand in it; yet the Carrier may have his Action against the Hundred, but happily he may have the lesse damages if it be urged. Siles Rep. 427.

32. That if a man come to dwell in the Hundred after the Robbery, it seems he is to be charged as of the Hundred. And if a Hundredor sell, or lease his Land after the Robbery, yet this Land will be chargeable. Noys Rep. 155. See more of this. Yelverton. Rep. 16. Croo. 1. 245. Croo. 2. 183. 224. 351. Goldsb. page 58. Noys Rep. 125. Owens Rep. 7. Siles Rep. 285. 472.

CHAP. XII.

Of an Action upon the Case for Doing, not doing, or mis-doing in other Cases, and where it will lye, or not

THis Action doth sometimes arise, and is given by Law in many other Cases; besides what are mentioned in the fore-going Chapters; And in some of them for doing of what a man should not do; in others, for not doing what he ought, and for the ill doing of what a man doth, or ought to do. As for example: Sect. 1.

If one disturb me in my way to my House, or Land, by stopping, or straitning of it, or stop, or turn my water, coming to my House, Mill, or Ground, or my Light to my House; or if one stop a Ditch or River, or set up Flow-gates, so as to make the water over-flow, and drown my Ground adjoyning; I may have this Action for it. But if a man stop or turn water onely to amend his Banks, or Mills, having by custome and use done it; this is justifiable. But for this, see chap. 5. sect. 1, 2, 3, &c. Coo. 4. 86. 9. 50. Dyer. 320. Nusance in House, Way, Light, &c.

If one stop a stream of water, and put it out of its old course, and by that means my Ground is drowned; I may have this Action against him. New B. of Entries. f. 18. Dyer. 248. Stopping water

So if one disturb me in my Office, or Isle, Walk, Fold, or Foldage, or watring place, or in my Franchize, or Liberty, as Leet, and the like; or in any other profit appendens; I may have this Action. Coo. 4. 89. and 5. 1 &c. Dyer. 250. 320. 10 H. 7. 21. 21 H. 7. 29. 27 H. 8. 31. 27 H. 6. 27. But see for this, chap. 5. sect. 8, 9.

If I be disturbed in my Isle, Seat, or proceeding in a Seat, Place, or Chappel, or in my Burying-place in any Church, which I have had, time out of mind, as belonging to my ancient House by prescription, Disturbance in an Isle, Seat, &c.

and

and I be disturbed therein by the Parson, or any other; I may have remedy by this Action, as I may for a disturbance in my Common way, Walk, Foldage, Fair, Market, Toll, Office, or Court-keeping, or other such like thing. Croo. 2. 43. 123. 180. 263. 605, 606. Bulstr. 1. part 47. 69. 2. part 14. 129. Coo. 5. 76. 1. part of Inst. 56. 13 H. 7. 26. Noys Rep. 78. Brownl. 1. part 197. 231. Coo. Rep. 12. 105. Bridg. Rep. 4. Bendl. 89.

So if any thing be done to the prejudice of the Church-way, or high-way, by which I have any special damage more than others; I may have this Action against him that did it. See for this, chap. 5. throughout.

In Commons. So if one disturbe mee in my Common, that I cannot have it as liberally, as formerly I have had; I may have this Action. See for this, chap. 5. sect. 4, 5.

Inclosures. If one inclose Land, which should lye open, in a Manor, by which the Commoners have not enough for to Common their Cattle; or eat up the Common so much, that the Commoners have not enough; in this case every Commoner may have this Action against him. Coo. 9. 113. F.N.B. 145. 21 H. 7. 40.

Watring-place. If the Inhabitants of a Parish have a watering-place by prescription, and be disturbed in it; each of them (as it seems) may have this Action for such disturbance. Finches Ley. 187. 27 H. 8. 27.

If one dig a Pit in a place where I have Common, by occasion whereof my Beast there going, falls in it, and is hurt; I may have this Action. Croo. 2. part 158. See chap. 15. sect. 6. case 25.

Suits in Law. Sect. 2. If one do mée any wrong, in, or about a Suit in Law; as if one shall sue for, or against mée without warrant of Attorney, make a false Return, vex mée with unjust Suits, personate mée, and do, and suffer somewhat to be done therein to my prejudice, or the like; I may have this Action. But for this, see chap. 10. throughout.

Conspiracy. So if one procure another maliciously to indict mée for any offence, and causelessly vex mée thereby; I may have this Action. See for this chap. 10. throughout. And Conspiracy, in my other Book of Action upon the Case.

If one arrest mée, and bring mee before a Justice of Peace, under pretence of some Crime, without any probable cause at all, and I am indicted, and acquitted of it; I may have this Action. Trin. 7 Jac. B.R. Olivers Case. And if a Justice of Peace shall send a Warrant for mée, and vex mée upon some pretended Felony, or other Crime without any complaint, or information, or cause at all, but out of malice; I may have this Action against him. Croo. 1. last. publisht. 130.

If A. and B. conspire, that B. shall begin a Suit against mée, and lay an Action in another County, and not that wherein I dwell, and follow it till I be out-lawed, to the intent I may make a forfeiture of all my goods. Lanes Rep. 49.

Suits in Law. If any Attorney or Officer of any Court shall do any thing in, or about a Suit of mine in any Court more than hée hath warrant or authority from mée to do, or not do his duty, or deal deceitfully with, about any Cause; I may have remedy by this Action. 20 H. 6. 4. 25. 3 H. 7. 14. Broo. Action, &c. 117. 108. 11 H. 6. 18. F.N.B. 96, 97. 190. 19 H. 6. 44. But see for this chap. 6. chap. 10. throughout.

Neglect, or deceit in an Officer. So for an Attorney, or Officer, that shall do any thing besides, or contrary to his trust, or shall neglect his trust, and do not his Office.

If one leavy a Fine, suffer a Recovery, acknowledge a Judgement, enter a Suit, a Bail, or a Recognizance in my name, by which I am damnified;

damnified; I may have this Action against him. F.N.B. 98. 100. 19 H. 6. 44. See chap. 6. See chap. 15. sect. 6. case 28.

If I enter into a Statute, to pay mony at a day, and pay it, and after another get the Statute, and sue it against me; I may have this Action: And so in any case, if any man sue mee in anothers name, without his privity. F.N.B. 96. 100. Vexatious Suit.

If one sue mee in anothers name, without his privity, upon a Statute, Bond, or any other good cause; I may have this Action against him. F.N.B. 96, 97. 100. And if by this means my other Creditors fall upon mee, damages shall be increased. March. Rep. 47. Suit in anothers name, without his privity.

If one procure another to sue, and thereby to vex mee without cause; I may have this Action against the procurer. F.N.B. 98. 116.

If I be bound to appear in a Court at a day, and before, or against the day, one cause mee to be arrested of purpose and malice, to prevent my appearance, and cause a forfeiture of my Bond; I may have this Action against him. 7 H. 6. 45. Fitz. 4. For Suits. See more chap. 15. sect. 6. case 11. 18. If one shall counterfeit a Letter in my name, and deliver it to my Servant, and the effect of it is, to perswade him to deliver the counterfeiter of it in mony, and my servant doth so; I may for this deceit have this Action against the counterfeiter of it. Adjudged. Trin. 7 Jac. B. R. Traevis Case. See more of this chap. 6. sect. 3. Deceit.

If one deal deceitfully with mee in a bargain, by false weights, measures, wares, or selling what is not his own, or the like; I may have this Action. See for this chap. 4. sect. 8. chap. 6. sect. 2, 3. Deceit in Bargaining. Sect. 3.

And if a man, being trusted by mee, shall not perform the trust I have put upon him; as if I retain an Attorney to take an Obligation in my name, and hee take it in his own. 20 H. 6. 25. See for this chap. 6. sect. 8. chap. 7. sect. 3, 4. Breach of trust.

So if one hinder mee of my remedy for my debt, or duty; as distresse, execution, and the like. But for this, see chap. 10. sect. 3, 4. Hinderance of mee in my remedy for a wrong.

If one hire a Horse of mine, and abuse, and hurt him; I may have this Action. Brownl. and Goldsd. 17. Abuse of loan-goods.

If a sudden fire happen by accident in another house neer to mine, whereby my house is burned also; I cannot have Action for this: But if it be by any negligence of him, his wife, servant, or children, or hostler; I may have this Action: And so it is said, if the fire be by one that comes into his house, or hostery, by his leave, or knowledge; But if any one come against his will, or unknown to him, by whose means the house is burned, and thereby my house also; I may not have this Action against him. 42 Ass. p. 8. Action, &c. 43. 2 H. 4. 18. Action, &c. 25. 31 H. 6. Doble. 31. Burning a House.

If a man shot at a Fowl standing in his own house, and thereby fire his own house, and mine also neer to it; I may have this Action against him. Croo. 1. last publisht. 10. part 5.

If my Lessee at will by negligence suffer the housing he holdeth of mee, to be burnt; I may not have this Action against him. Croo. 1. last publisht. 777. 784. Adjudged. As I may against him that keepeth not well his fire, by which my house is burned, being neer to his. 2 H. 4. 7. 18. 8 Ed. 4. 19. pl. 36. Bendloes. 153. But in the first case, if it were voluntary, I may have perhaps some other, or this Action. And although it be done by his servant, or that his own house be burnt also, this will not excuse him that occasioneth the burning of his neighbours house. 2 H. 4. 7. Doct. and Stud. 137. 33 H. 6. 1. Lib. Inter. R. A. sect. 1. But there must be some negligence in the case of him, or some of his Family. 2 H. 4. 7. Lib.

Lib. Intr. 8. A. sect. 1, 2. But if it be done and occasioned by a stranger out of malice, or suddenly, no man can tell how; hee is not chargeable for his neighbours house that is burnt by the burning of his own house. 42. Ass. 8. 2 H. 4. 18. 33 H. 6. 1.

If my Servant bring fire in the street, and thereby burn my house; it is said not actionable. Quere. But in this thing it seems the Law is general, that if my Neighbour, and his Servant, or any other that shall come into his house, by his good will, or agreement, shall wilfully fire his, and thereby my house; I may have this Action: But if it be done against his will, no Action lyeth. 2 H. 4. 18. Old Book of Entries fol. 8. See after sect. 4. chap. 15. sect. 6. case 7. 15.

For threatning of me, my wife, or servants, whereby, &c.

If one threaten to take away my goods, unlesse I will give him ten pound, and I do so upon this, for fear I may have this Action. 7 Ed. 4. 2. So if one threaten my Tenants at will, so that thereby they depart off my Land, but it must be a threatning of life, or member; for a threatning by a man, of a Suit for wrong done to them by mee, is not actionable: So if one had beaten a mans Villains heretofore, and thereby they had departed from off his Land. But if one take and detain my Cattle, till I pay him twenty pound, or threaten to beat mee till I do so; I must have another, and not this Action. 9 H. 7. 8. 21 H. 6. 29. 9 H. 6. Action, &c. 21. 7 Ed. 4. 21. Bar. 91.

If one threaten mee, my Wife, Servants, or Children, that hee, or some other, will do us some hurt, and hee, or that other doth after lye in wait to do it, so that by this means wee are put in so much fear, that wee dare not follow our businesse; as where my Servant by this means dares not go abroad about his work, or departs out of my service, whereby I have any special damage; I may have this Action: But it will not lye for bare threatning onely, without lying in wait, and losse by it. Coo. 7. 1. Kelw. 40. 9 H. 7. 7. Bendl. 15. 7. See chap. 15. sect. 6. case 3. 8. 27.

For beating, or laming one, whereby his marriage is lost. Sect. 4.

If one beat, and lame my Son and Heir to Land, that is his Apprentice; I can have no Action for this under pretence that it marrs his match, and hinders his preferment. Leonards Rep. pl. 63. Gray and Jeffes Case, Adjudged. But I might have had an Action against him that should have taken away my Son and Heir, and marry him: But if the Son marry of himself, or a stranger procure him to marry one; no Action lyeth for this. Croo. 1. last publisht. 55.

Wrong to my person. Threatning.

If any one lye in wait to kill mee, or take mee as his Villain, that I dare not go about my businesse; I may have this Action against him. 2 Ed. 4. 5. 17 Ed. 4. 4. Regist. Orig. 103. 102. 13 H. 6. 27. 2 H. 7. 12. pl. 15. Coo. 4. 18. Dyer. 258. Jenkins Cent. 4. case 11.

So if one threaten by word, or writing, to kill, maime, or beat mee, if I come out of my house. 17 Ed. 3. 4. 10 H. 4. 6. Lib. Intr. 661. B. sect. 1, 2.

Lessor and Lessee.

If the Lessor put mee that am Executor, of the Lessee for years, or my Executors after mee of the term; I, or they may have this Action against him. Fitz. Nat. Br. Coo. 4. 94. or an ejectio firmæ.

Expulsion by the Lessor.

If the Lessee keep out his Lessor, coming to view the house, if any waste be done; the Lessor may have this Action against him. Hill. 29 Jac. Adjudged. B. R. Croo. 2. 478.

Waste by the Lessees assignes

If a Lessee for life make a Lease for years, and this Lessee for years commits waste, for which the Lessee for life is punished, in this case he may have this Action against the Lessee for years, and recover as much as the Lessor doth, or may recover of him. Pasche. 38 Eliz. B. R. Gennings Case.

So

So if the Lessée for years of a house, lease it for part of the time, and that time expire, and the Lessée continue in possession, and pull down part of the house; the first Lessée may have this Action. Adjudged. Trin. 6 Car. 1. B. R.

If a Tenant at will of a House, or Land, or his Servant, or his Lessée at will, which is his Servant, do voluntarily burn the House, or cut down the Trées; the first Lessor may have remedy by this Action. Mich. 17 Jac. B. R. But if by negligence hée suffer the House to be burnt, or Trées cut down; no Action will lye for this. But some have held in the first Case, that a general Action of Trespasse lyeth rather, for by this waste, the will is determined. But it is now resolved, that in case of a Lease made by the Lessée for life or years, who is hereby made liable to an Action of waste; that in this case the second Lessor may have a general Action of Trespasse, or this Action, at his election. Coo. 5. 13. Dyer. 122. Lit. 15 Ed. 4. 20. 14 H. 8. 12. 2 H. 7. 11. See Croo. 1. 135. and Croo. 1. last publisht. 777. 784. where it is adjudged, that for a negligent burning of the house by a Tenant at will, no more than for not repairing will this Action lye by him in reversion. But if hee voluntarily pull down, or burn the House, or cut down Trées; for this a general Action of Trespasse will lye, as against my Shepherd that kills my Shéep.

For waste made by a Tenant at will. Burning a House. Trespasse.

If a Tenant by Elegit hold the Land after the mony is tendred to him, and cut down the Trées upon the Land; this Action will lye for it. 21 Ed. 3. 16.

Tenant by *Elegit*.

This Action will lye against him that disturbeth my Bayliff in taking of a distress for an amearcement. 18 H. 6. 9. pl. 20. And against him that disturbeth my Servant in gathering of my Tithes, Toll, or in his doing of any other service. Fitz. 94. 19 R. 2. Action, &c. 52. 9 H. 6. 45. Conat. 18.

For disturbing one in doing my service, or taking a distress.

If any one shall do mee wrong in my Servants service; as by taking him away, or by inticing him away out of my service, or by retaining of him from mée; I may have this Action. 9 R. 2. Action upon the Case. 52. 21 *H.* 4. 22. 21 H. 6. 9. And to say hée is not his Servant, is a good Bar in such an Action. 20 H. 7. 4. pl. 13. Fincux, so to say it was his Wife, Farmer, Companion, &c. 7 R. 2. Traverse. 206. 13 R. 2. Traverse. 210. 37 *H.* 6, 7. pl. 13.

Retaining another mans servant. Barre in this Action. Sect. 5.

So if one beat my Servant, or hurt him, or imprison, or maime, or threaten him onely, if by this I lose his service, albeit hée be but my Servant at his own pleasure; I may have this Action for my relief; but this must be in the Case, that I thereby lose his service. 21 *H.* 6. 9. Coo. 9. 113. 18 Ed. 4. 27. 28 *H.* 6. 14. 21 *H.* 7. 71. Regist. Orig. 94. B. 102. A. N.B. 91. Lib. Intr. 613. B. sect. 19. 674. C. sect. 1. 19 *H.* 6. 35. pl. 73. 7 *H.* 8. 189. pl. 4.

For losse of his servants service.

If a Master send his Servant to pay mony on a Bond, or to do some important businesse, and the man calls at a Smith to shoe his horse, and hée lames him, by which hee was not able to come time enough to pay the mony, or do the businesse; in this Case the Master and Man both may each of them have this Action against the Smith. Bulstr. 2. part 334.

Smith cly a Horse.

So if a man digge a Pit in the high-way, and in such a case my Servant fall, and is hurt, and so not able to do his work in time. Bulstr. 2. part. 334. Broo. Action, &c. 24. Old B. of Entries. fol. 2. 46 Ed. 3. 19. Stiles Rep. 335.

This Action will lye for disturbing men to come to my Chappel with offerings. 19 R. 2. Action upon the Case. 52.

Chappel.

Fair, disturbance in toll.

So for hindring people to come to my Fair, whereby I lose my Toll, &c. some think it may lye for this.

Mill grinding, disturbance therein.

So I may have this Action against him that shall disturb Customers to come to my Mill, where I have an antient Mill, and by prescription the custome of Tenants. 11 *H.* 4. 47. 41 Ed. 3. 24. 29 Ed. 3. 18. 9 *H.* 6. 45.

So for erecting of a new Mill to my prejudice, in my profit, to my antient Mill, by the diversion of the water that comes to my Mill. Lib. Intr. B. sect. 3. D. sect. 1. But if I have a Mill in B. and another sets up a Mill there, by which I lose the profit of my Mill, by the going of others to this new Mill; no Action will lye for this. Broo. sect. 40. 22 *H.* 6. 15. 11 *H.* 4. 47.

About a meer Stone.

If one remove a meer Stone antiently fixed, by which I have prejudice; I may have this Action, albeit I be a Tenant in Common. 1 H. 2. Old Lib. Intr. 9. C. sect. 1.

Hay and Straw

If one grant mee to have Hay or Straw in his house for my two Kine, all the Winter long, during my life, and I be disturbed in it; I may have this Action. Fitz. Action. 17.

Conyes.

If one put Cats in my Warren amongst my Conyes; it seems I may have this Action for it. Mich. 2 Jac. B. R. by two Justices. Old B. of Entries. fol. 13.

But if Conyes or Pigeons come into another mans Corn; no Action will lye for this, for that it cannot be known whose they are. Croo. 1. 282.

Upon breach of a Statute.

If a Statute forbids a thing without a penalty, and it be broken, and I have any special losse by it; some say I may have this Action for it, but it must be taken per Rege, &c. Trin. 3 Jac. B. R. F.N.B. 90.

Distress in the high-way.

So if one distrains my Cattle in the Kings high-way, contrary to the Statute of Marlebridge.

So if the Court Marshalsie holds plea where it is forbidden; or the Officer of a Spiritual Court refuseth to deliver a Libel upon the 2 H. 5. the party grieved may have this Action. Coo. 12. 100. and see Croo. 2. 133.

About a Trade.

This Action will lye for using the Trade of a Dyer in R. without licence of the Arch Bishop of York. Regist. Orig. 105. Coo. 8. 125.

If one hath the sole Trade of Baking in a Town by prescription, and another sets up a Bake-house there, and takes away his Trade; hee may have this Action. Coo. 8. 125.

Monopoly.

The King grants to A. the sole making of playing Cards; hee may not have this Action against another that shall use the Trade, for the Kings grant is void, Coo. 11. 86. See chap. 15. sect. 6. case 10. out of Coo. 11. 84. Noys Rep. 173, 174. chap. 15. sect. 6. case 38.

For retaining my Servant.

So it will not lye against one that doth retain a Servant of mine that is departed from mee without leave, unlesse hee had a hand in the procurement of him to leave my service. Leonards Rep. pl. 334.

Disturbance in a Leet.

If one distrain another to come to his Leet, that ought to come to my Leet; I may have this Action against him.

Upon an Escape or Rescue. Sect. 6.

If a prisoner in prison at my Suit escape by the Sheriff or Gaolers means, either by his negligence, or wilfulnesse; I may have this Action against the Sheriff or Gaoler, as the case is. And if hee get away by rescue against the Gaolers will; in this case also I may have this Action against the Gaoler. And if hee be forced to make mee amends for my damage; hee may have this Action against the prisoner for his Counter-Remedy. 7 *H.* 4. 14. Broo. 34. See for this chap. 10. But if a prisoner

Disturbance of mee in my Suit.

sooner escape against their will, and be re-taken upon a fresh pursuit, in the same, or another County, before Action brought by the Plaintiff against the Sheriff, or Gaoler; no Action will lye now against them: And if the Plaintiffs Action be brought before the re-taking, the Sheriff may either take and keep him in Execution, or have this Action. Coo. 3. 35.

If one in execution for mee on a Cap. Sat. be rescued from the Sheriff, I may have this Action against the Rescuers, or debt against the Sheriff, and if they be sued by the Sheriff after, may plead a Recovery. Croo. 1. 77.

If the Sheriff suffer one in execution upon a St. Merch. to escape, the Consuee may have this, or an Action of debt against him, at his choice. F.N.B. 93. B. C. Regist. 98. B. Coo. 4. 94. So if I do duly distrain a man for Rent, and another rescueth the distresse from mee: But if the arrest of the person, or the distresse of the goods be not legal, but torcious; there perhaps this Action will not lye. Bulstr. 3. 121. Disturbance of mee in my distress-taking.

If any one shall rescue a prisoner in execution, or arrested for my debt; I may have this Action against him, or against the Sheriff at my choice for this; or I may have an Action of debt for it against the Sheriff, and if I sue the Sheriff, then hee may sue him that made the rescue. Croo. Rep. 1. 77.

If a man be arrested at my Suit, and another man rescue him, and so hee get away, in this Case I may have this Action, and recover the debt and damage against the Rescuers. Hill. 20 Jac. B.R. and 7 Jac. B.R. Hawks Case. Or I may sue him that suffered the escape or rescue, at my choice, and hee may have his remedy against him, or them that made the rescue: And this is the proper Action to be had in all these and such like Cases. Croo. 1. 33. Popham Rep. 189. See for this in chap. 10. sect. 1, 2. &c. see more Croo. 1. last publishe. 335. 349. 384, 385.

If I have a Capias utlagatum, and deliver it to the Sheriff, to be executed whilst the Defendant is in his company, and in his County, and hee doth not arrest him, but suffer him to escape and return a non est inventus; this Action lyeth. Brownl. and Goldsb. 12. Escape and false Return.

Where I had the Wardship of Land of an Heir from the King, and a stranger taketh up the profits thereof from mee; this Action might have been had. 11 H. 4. 64. Action, &c. 29.

If a Millard take Toll of mee, or of my Tenants, where wee ought to grinde Toll free; an Action of Trespasse vi & armis lyeth: But if hee refuse to grinde Toll free; this Action lyeth. 41 Ed. 3. 24. Action 31. Millard, for taking Toll not due.

This Action lyeth for the taking of Toll of mee, or of my Tenants in a Fair, or Market, where they or I ought to be toll free. 43 Ed. 3. 29. Action, &c. 3. Fitz. fol. 94. F.N.B. 94 I. 48 Ed. 3. 17. Leonards Rep. pl. 315.

If I have right to toll in a Fair, or Market, and another come there and set up a Toll-both, and disturb my Servant in his gathering of Toll, I may have this Action against him. Croo. 2. parte 123. 600. Owens Rep. 107. Old B. of Entries. fol. 5. New B. of Entries. 10. See chap. 15. sect. 6. case 23. Disturbing mee in the taking of my Toll in a Fair or Market

If one take Toll of mee, where none is due, I may have this Action. F.N.B. 94. 11 H. 4. 64. or an Action of Trespasse, at my choice. Coo. 4. 94.

If a Millard be to grinde at his Mill my grist Toll free, and hee refuseth so to do; I may have this Action against him. 43 Ed. 4. 34. Croo. 130. Plea. 100. per Keble.

If

If one that ought to pay Toll, sell, and pay no Toll; this Action lyeth not. 7 H. 4. 45. Action, &c. 26. 20 H. 7. 1. And yet happily

If one shall buy, or sell in my Market, or Fair, that ought to pay Toll, and refuse so to do; I may have this Action. 7 H. 44. pl. 11.

But if one passe over my passage, or port, where I have Toll. Quære what remedy. 21 H. 7. 16. pl. 25.

To grinde at my Mill.

If being Lord of a Mannor, all my Tenants have been used, time out of mind, to grinde all their Corn at my Mill, and they do not so; I that am the Lord may have this Action against him that refuseth. Hobb. 253. And I must shew I am seized of such a Mannor, and prescribe to the thing, that all the Corn they spent in their houses, or exposed to sale in the place, was, time out of mind, used there to be ground, &c. Brownl. and Goldsb. 18. See chap. 15. sect. 6. case 31, 32.

Hinder the Parson of Tithes.

If one hinder the Parson to receive his just dues of Tithe, or other dues; hee may have this Action against him. Coo. 2. part. Instit. 650.

Not taking away Tithes.

If I set out my Tithes duly and the Parson will not take them away in convenient time: Or one that hath bought my Hay on my Ground, shall suffer it to lye so long upon my Ground, or in my House, that I bee damaged by it; I may have this Action against him. Godb. Rep. pl. 424. Broo. Action upon the Case. 48. See chap. 15. sect. 6. case 14.

Parson not keeping a Bull.

If the Parson of the Parish be bound by the common custome to kéep a common Bull, or Boar, and do it not, and any Parishioner hath losse thereby; hée may have this Action, for this Custome is reasonable. Croo. 1. last publisht. 569.

Not saying of Divine Service.

If one be bound by prescription to say Divine Service in my private Chappel, and do it not; I may have this Action. Coo. 5. 73. 22 H. 6. 46.

But if it be to be done to a Parish, it is otherwise; no Action will lye for any one particular man. Yet see chap. 5. sect. 9. and Croo. 2. 263. Coo. 5. 103. 9. 113.

Upon a Bailment to keep. Sect. 7.

If I leave my goods with one to kéep for mee, or I leave them with him, without any words passed between us, and hee takes them into his custody, and the goods be afterwards lost or wasted; I may recover the worth of them, by this Action, albeit he be to have nothing for the keeping of them: But if when hee receiveth them, he doth take them with this special caution and agréement, that hee tell the owner that hee will not answer for them, or will keep them as hee keeps his own, or as well as hee can; in these cases no Action will lye for it, unlesse there bee a good Consideration, and an Assumpsit to keep them safe in the Case. Coo. 4. 83. & 5. 13. Super Lit. 89. Kelw. 77. 12 Ed. 4. 15. 2 H. 7. 11. Old B. of Entries. 39.

So if I buy Corn of one, and pay part of the mony for it, and leave it with him to keep for mee till such a time, and hee converts it to his own use; I may have this Action: Or if it bee in baggs, I may have a detinue. Kelw. 77. See more for this chap. 8. and chap. 9. throughout.

If I deliver goods to W. and he deliver them over to I. S. to my use, and I. S. do impaire them; I may have this remedy against I. S. 12 Ed. 4. 13. Broo. 96.

So if I deliver my goods to another, and hee spoil, or lose them. See more chap. 9.

About Goods and Cattle.

If one borrow my horse, which dyeth suddenly, without any default in him; no Action will lye for this. 4 Ed. 3. 36. See more of this chap. 8, 9.

Sheep.

But this Action will lye against him that shall keep from mee Sheep delivered to mee for a year, to dung my Land. N.B. 26. B.

If one have my Cattle to keep, and hee suffers them to dye, or be lost by his negligence; I may have this Action against him: But if they dye by Gods hand, without any negligence of his; no Action will lye for this. Coo. 5. 14. Dyer. 12. 2 H. 7. 11. albeit hee promise to keep them safe; by Just. Bridgman.

But if my Shepherd suffer my Sheep to be drowned, or my Plowman suffer my Corn to be spoiled; I may have this Action against him. 2 H. 7. 11. 7 H. 4. 14. Coo. 5. 13. Dyer. 121. See more in chap. 6. chap. 7.

If one for hire borrows my horse to ride to London, and hee rides him further, or rides him out of the way, or forwards and backwards, and forwards again in and upon the right ways in all these cases I may have this Action, and especially if the horse is hurt thereby: So if the borrower rive him an excessive pace, so as to hurt him, albeit hee hath ridden him no further than was agreed. Doct. and Stud. 128, 129. Upon a Loan.

So if one hire my goods to one purpose, and use them to another; in all these cases I may have this Action: But if hee that doth so borrow my horse, by hard riding make him weary onely, so that hee will do no work in a good while after; no Action will lye for this. 12 Ed. 4. 8 13. 21 Ed. 4. 79. Coo. 8. 146. 2 H. 7. 11. Upon a hire of goods.

If the borrower of my horse shall put him into an old rotten house ready to fall, and the house fall down and kill him; or if hee neglect to take care of him, or suffer him to be abused, I may have this Action: But if hee put him in a strong house, which doth casually fall and kill him; or if hee dye suddenly, without any default in the borrower, in the doing of that for which hee was borrowed; no Action will lye for this. Doct. and Stud. 128, 129. 40 Ed. 3. 6. See Exod. 22. 14. 15. Croo. 1. 14. Brownl. 1. part 8, 9, 17. See more chap. 15. sect. 6. case 6.

If one lend mee a horse for hire for a time, and take him from mee within the time; I may have this Action against him. Fitz. N. B. 80.

If one finde my goods, and they be after hurt or lost by casualty without any default of his, hee is not to be charged: But if hee lose them, or suffer them to be impaired by his neglect; I may have this Action against him: But if they be left in a house, which by chance is burned, or falleth, or they be delivered to another to keep, who runs away with them; here it seems the finder is not to be charged. Doct. and Stud. 38. 129. Goods lost.

The Executor one and thirty daies after the death of the testator, comes to the Heir, and demands his goods in the House of the Heir, and he refuseth to deliver them; it seems this is actionable in this Case, and that this is a convenient time. Mich. 7. Jac. B. R. Steedmans Case. And so in all Cases where the Executor shall come in convenient time, to demand his goods, and is actually disturbed, that hee cannot have them; hee may have this Action. Mich. 7 Jac. B. R. Detained.

It would have lyen for the taking away of ones Ward, and hee might have recovered the value of the Marriage. 29 Ass. 35. Taken away.

If one take away my goods from mee, and another take them by force from him; it seems I may have this Action against the second taker. 12 Ed. 4. 12.

If one have a general, and another a special property in one and the same thing, and they disturb each other to have and use the thing according to Law; they may have this Action the one against the other. As if I borrow or hire a Horse, or other thing for a special purpose, I have a property in it, and therefore if hee take it away before I have used it Two properties.

to

to that purpose; I may have this Action against him. And if I abuse it, or use it to another purpose; as if I borrow or hire it to ride to Dover, and go further, or go out of the way, or ride forwards and backwards, or the like, or ride him excessively; hee may have this Action, and then especially when the horse is hurt thereby: And yet in this case, if I ride out of the way, the owner cannot take him from mee, till I have gone my Journey. 12 Ed. 4. 8. 13. 21 Ed. 4. 79. Doct. and Stud. 128, 129. Coo. 8. 146. 2 H. 7. 11. F. N. B. 186.

So if one deliver goods to mee, to deliver over, hee hath the general property thereof, so as they may be taken in execution for his debt, and if they be taken away, hee may have this Action of Trover for them: And I have the special property upon which I may bring this Action also, if they be taken from mee.

If one borrow a Horse of mee, and use him in any other manner, than for which hee was lent; I may have this Action against him: And if hee put him in an old rotten house, and it fall upon him, and hee dyes, or is hurt; this Action lyeth: But if hee be used well, and not abused, and dye; or bee put in a strong house, and it fall upon him, and kill him; no Action will lye for this. 40 Ed. 3. 6. Doct. and Stud. 29. 128.

If I borrow a horse for one purpose, and use him to another, the lender may have this Action against mee: And if hee take him from mee, or disturb mee in the use of him, to that end that I borrowed him; I may have this Action against him: And so in other cases, where I have but a special property in goods: And therein also in some cases, hee that hath the general property of the same goods; may have an Action. As if I should hire another mans Horse for my life, hee hath the general, and I the special property, and wee may not wrong each other of his interest in the thing, and hee that hath wrong herein may be relieved by this Action. 17 Ed. 4. 8. Coo. upon Lit. 145. 10 Ed. 4. 14. Kelw. 88. Coo. 11. 30. 7. 17. Dyer. 306.

If one borrow my Horse to do such a thing, and put him to a worse work, whereby hee is hurt; I may have this Action, but must shew wherein it was, and it is not sufficient to say hee put a greater burden on him generally. Croo. 1. part last publisht. 194.

Detinue. If I deliver to another my Cattle, or Goods to keep, and hee keep them negligently, so as they are lost or spoiled; I may have this Action, or Detinue, for my relief. Brownl. 2. part. 152. 2 H. 7. 11. Dyer. 12. Coo. 7. 15.

But if the spoil come by Gods hand, without any neglect of his; no Action will lye for this. By Just. Bridgman.

For spoiling my Cattle or Goods. Sect. 8. If one have my Cattle to keep, and they dye by Gods hand; this Action will not lye, though hee promised to keep them safe: But if a man have my Cattle to keep, and suffer them to dye by his negligence; I may have this Action. 2 H. 7. 11. Dyer. 12. Coo. 5. 14. per Just. Bridgman.

Pledge. If I pledge my goods to another for mony, and tender the mony at the time, and hee refuseth to deliver them, and after they perish by his default; I may have this Action: But if they perish by accident, and without any default of his, it is otherwise. Doct. and Stud. 129. Old B. of Entries. 8. F. N. B. 86. See for this chap. 4.

If one that findeth my goods doth lose them, or suffer them to be impaired by his default; I may have this Action against him: But if they bee left in a house, which happens to be burnt, or to fall and spoil them; or they be delivered to another to keep, who doth run away with them; in these cases it seems the finder shall not be chargeable.

And

And if one finde my goods, and they be afterwards hurt, or lost, without any default of his, by casualty; no Action will lye for this. Doct. and Stud. 138, 139. Coo. 4. 83.

This Action will lye for taking a distresse of a Parson, or Vicar in his spiritual possession against Articuli Cleri. 94 N. B. 94. Coo. 12. 100. Taking a distresse.

So for distraining my Cattle in the high-way. Regist. 100. B. Coo. 12. 100.

So for distraining a Prelates Horse, where are other things distrainable; hee may have this Action, or an Action of Trespasse. Coo. 4. 95. Regist. Orig. 100. B.

So for distraining Cattle of the Plow, and Lambs, where there is other distresse sufficient. Lib. Intr. 226. N. B. 90. B. Dyer. 312. And this is actionable, albeit the Tenant hath made an agreement for his Rent. 18 Ed. 2. See Croo. 2. 133.

So for distraining of Suitors to come to a Leet, that do not owe Suit thereto. Coo. 4. 49. B. Regist. Orig. 107. F. N. B. 94. G.

So if I have a Manor within an Honor, and a Leet in my Manor, for my Tenants, and I, or my Tenants are distrained by the Lord of the Honor, to come to his Leet; hee that is so distrained, may have this, or an Action of Trespasse. F. N. B. 94. Regist. 103. B. Coo. 4. 94.

So for distraining Cows great with Calf, and driving, or is using them, that thereby they lose their Calves. F. N. B. 86.

So for distraining Tenants in antient Demesne for Toll, that ought to be Toll-free. Croo. 1. last publisht. 227. For preventing my distresse.

If a strangers Cattle be on my ground damage-feasant, and a third man drives them off to prevent my taking of them; I may have this Action.

So if I be coming to distrain my Tenant for my Rent, who hearing thereof, drives away his Cattle to prevent my distresse. Finches Law. 200. Coo. 5. 91. & H. 20 Jac. By Just. Houghton.

So if one drive my Cattle into another mans ground, so as they be Trespassors, and distrained damage-feasant, and I forced to compound for it. Croo. 1. 236.

If one take going for Cattle with mee till Michaelmas, and do not then take them away, but suffer them to remain on my ground damage-feasant: I may have this Action. 21 H. 7. 45 Ed. 3. 6. For damage-feasant.

So if one buy my Hay in my Meadow, and do not take it away in time, but suffer it so long upon my ground, as to marre my grasse; I may have this Action for it. Fitz. 48. For not taking away goods from off my Ground.

So if I set out the Parsons Tithe duly, and give him notice thereof, and hee do not take it away out of my House, or Ground, in a reasonable time, but suffer it there to hurt my ground; I may have this Action against him. Stuckleys Case. Co. B. 45 Ed. 3. 6. Mich. 21 Jac. Denhams Case, adjudged. Leys Rep. 70, 71.

If one finde my goods; and use them, or wilfully abuse them; as if Paper, and hee put it into the water, or the like; I may have this Action against him. But not for any negligent keeping of them; as if it bee a Garment that I finde of anothers, and I suffer it to be moth-eaten; or a Horse, and give him no meat; for no Law compelleth him that findes a thing to keep it safely. Croo. 1. last publisht. 219. Upon a Trover.

If I leave my Horse with an Inne-keeper to be safely kept for mee at such a Rate, and the Hostler lends him out to hire to divers persons, and lames him, whereby hee is made unfit for my service, and work I have to do for him; I may have this Action against him for this. Bendl. 171. Hostler abuse my Horse.

Pledge.

Goods pawned without setting any time of redemption, are not gone by the death of him to whom they are pawned; but otherwise by the death of him that pawned them.

If one that hath pawned his goods, after his death to whom they are pawned, tender the money to his Executor, and hee refuseth it, although this be not a payment in fact, yet the request doth vest the property in him that pawned it. Noys Rep. 137. And hee may have remedy by this Action that is wronged therein.

About Deeds. Sect. 9.

This Action will lye for mee against him that shall burn, tear, lose, or spoil my Deed, or the seal of my Deed, when it is either delivered to him to be kept, or when hee shall come by it otherwise; and this albeit the Deed be naught. 9 Ed. 4. 53. 34 H. 6. 4. 39 H. 6. 46. Old. Lib. Intr. 7. B. sect. 1. fol. 2. Coo. upon Lit. 286. 4 H. 7. 7. Coo. 1. 1. 12 Ed. 4. 13. Broo. Action, &c. 96. 382. M. 9 Jac. B. R. Constables Case. Bulstr. 1. part. 214. Croo. 2. 255.

If I have bought Lands, and a stranger hath some of my Deeds that do belong to it, and refuseth to deliver them, but keeps them from mee; I may have this Action. Old B. of Entries. fol. 5.

So if one sell mee his Deeds with his Land, and refuses to deliver them to mee upon request. Lib. Intr. 5. A, sect. 2.

Forgery or Rasure.

So for the forgery of a Deed, by which I am hurt. N. B. 96. B. 17 Ed. 3. 49. Regist. Orig. 115. A. and B. As if one forge an Obligation, which is put in Suit against mee; I may have this Action against him. 5 Ed. 4. 126. Coo. 4. 18. 19 H. 6. 44. 43 Ed. 3. 10.

This Action will lye against a Curate for raising out of a mans name, and inserting and reading of another name in a sentence of Excommunication in the Church, by which hee is troubled, &c. Croo. 1. part last publishr. 838.

If one seal a Deed, with some blanks to be filled up afterwards, and another shall fraudulently insert something without his consent that sealed it, &c. this Action will lye. Croo. 1. part last publishr. 626, 627.

Forgery of any Record, or Deed.

Also this Action will lye against him that shall forge a St. Merchant, or staple Recognizance, Deed, Obligation, or other such like writing in anothers name, and the same be made use of against him, and thereby hee is hurt, whose name is forged. N. B. 96. B. 17 Ed. 3. 49. Regist. Orig. 115. A. and B. 39 Ed. 3. 13. Regist. Orig. 102. B. Or forge any thing in a Record. Stiles. Rep. 117. 5 Ed. 4. 126. pl. 144. Coo. 4. 18. Or a Resignation. Regist. Orig. 14. B. Or a Will. 5 Ed. 4. 126. B. Or any such like publick Instrument by which I am hurt; I may have this Action against him; but not till I am molested by it. 43 Ed. 3. 10. 5 Ed. 4. 126. 126. F. N. B. 99. K. See Deceit. 19 H. 6. 44.

About an Estray.

If I seize an Estray within my Manor, as belonging to it, and one take it from mee; I may have this Action. H. 31 Ed. 3. Breife. 333. M. 13 Ed. 3. Writ. 674.

Officer.

If an Officer arrest mee, and I offer him sufficient bail, and hee refuse it, and keep mee prisoner afterwards; it seems I may have this Action against him, and against the Plaintiff, if hee have any hand in it. Croo. 1. part 142. Also I may have this Action against an Officer, in these following Cases. That is to say,

Miscarriage in his Office.

1. Where an Officer takes Toll of mee where none is due. F. N. B. 94.

2. Where an Officer of a Court shall get a privilege for one, supposing him to be his Servant, and is not, by which I am prejudiced in my Suit against him. 31 Ed. 4. 22. So where hee shall make any false Return of Certificate.

3. Where

3. Where a publick Officer shall refuse to execute his Office for his due Fee being tendred to him, or recoverable by Law: As if a Serjeant at Law refuse to give advice, or an Attorney to be retained by mee; some hold, that for this I may have this Action, for they may sue for their Fees: But otherwise it is of a Barrister, for hee may not sue for his Fee. By Justice Bridgeman. 17 Car. 1. False Return or Certificate. Serjeant. Attorney.

So where a Sheriff, Bayliff, or any such like Officer, do mis-demeane themselves, by doing otherwise, and against, or by not doing, or mis-doing in their Office; the party grieved thereby may have this Action; and especially if hee tender him his due Fee before-hand. See chap. 15. sect. 6 case 11. Sheriff.

And so if the Sheriff refuse my Writ, as a Writ of Execution against one hee hath in Execution, or the like; or if hee have a Writ, or legal Warrant to arrest a man at my suit, and may do it, or I shew him the man, and this be on the Lords day, and hee doth it not. Pasche. 18 Jac. B. R. per three Justices. Coo. 5. 89. & 9. 60. Plow. 48. 41. Ass. pl. 12. Pasche. 7 Jac. By three Justices. Refuseth to arrest.

So where the Sheriff refuseth to return my Writ, or makes a false return upon it. 41. Ass. pl. 12. 21 Ed. 3. 43. 10 *H.* 7. 23. Old B. of Entries. 11. Refuseth to return a writ.

So where the Officer shall make a false Certificate in a course of Law, where he is bound by Law no make a true one. Coo. 11. 94. Makes a false Return of a Writ.

So where the Sheriff shall out-law a man, and not proclaim him according to the Statute. 10 *H.* 7. 23. Broo. 122. Out-laws, and not proclaims.

So where hee shall return a man of a Jury, that hath a Charter of Exemption, and given notice thereof to the Sheriff. 18 *H.* 8. 5. See chap. 10. Return a Juror exempted.

So if hee shall enter upon any private mans Franchize, to execute his Writs, hee that hath the Franchize, may have this Writ; but if it be to arrest a man, the arrest is good, and no false imprisonment will lye in the Case. F.N.B. 95. Entring a Franchize.

So if hee shall suffer a man arrested upon an execution to escape, the first Plaintiff may have this Action. Coo. 4. 95. 15 Ed. 4. 30. Escape upon Arrest.

So if hee shall proceed in a Cause in his Court, after the same is removed. F.N.B. 99. Proceed when a cause is removed.

So if hee or his Bayliff attatch a mans goods, and then deliver them back again to him. F.N.B. 92.

But it is said; that all this is to be understood of Ministerial Acts only, and that for Judicial Acts, some other remedy is to be had against them for their miscarriage therein. 12 H. 6. 3. 2 R. 3. 9.

But for Ministerial Acts it is a rule, that if any Ministerial Officer of any Court, shall make a false Return, or otherwise mis-demean himself, by which I have damage; I may have this Action: But if I have no damage by it; I can have no Action for it. Bulstr. 2. part. 338. 265.

Also this Action will lye in many Cases about Officers, both for, and against them; as this Action will lye against him that shall hinder mee in the seizure, or taking the usey profits of my Office, if an Office that brings profit. Croo. 2. 60. 6. Goldsb. 2. part. 331. Coo. 5. 76. Bridgman. 118. 6 Ed. 4. 9. 9 R. 2. Action of the Case. 2. Broo. 94. Coo. 9. 50. F.N.B. 94. As if I be Steward of an antient Court, and another disturb mee in the keeping of the Court. Croo. 1. part. 11. 415. And so the like. Croo. 1. 203. Croo. 1. last publisht. 859. Croo. 2. 606. March Rep. 939. For hindrance of an Officer in the doing of his Office. Sect. 10. Disturbance in a Court keeping. Disturbance of an Officer in the execution of his Office.

If an Officer be coming to arrest a mans person; or attatch his goods at my Suit, and another man conveys away the goods, or the person, so that the Officer cannot do his work for mee; I may have this Action against the disturber, and so also perhaps may the Officer. F. N. B. 102. 21 H. 7. 40. 18 Ed. 3. 3.

And so generally, for any disturber of a Sheriff, or any such like Officer in the execution of his Office; this Action will lye. See chap. 15. sect. 19. 22.

Councellor or Attorney.

So if my Councellor or Attorney do my business falsly, and unfaithfully; I may have this Action against him. 14 *H.* 6. 18. 20 *H.* 6. 25. See chap. 10.

So it may lye against a Constable, or Church-warden of a Parish for a false presentment; as to present, a man hath Lands in a Parish, to bring him under the rates there, where hee hath none, or the like. Croo. I. 336.

For double prosecution of a *Fieri facias.*

And if one sue out a Fieri facias upon a Judgement after hee hath had a Fieri facias returned, that the goods were levied, &c. this Action will lye; the party grieved may have his remedy by this Action.

About Cattle.

If one put piles in a River, by which my Oxen perish; I may have this Action against him for this. F. N. B. 92. F.

Destroy my Cattle.

So if one put such things into the water, as occasion the drowning of my Cattle: And if my Cattle be passing over Severne in a boat, and one of the passengers purposely, or otherwise force one of them into the water, whereby the rest of themselves follow, and are drowned; I may have this Action against him, and recover damages for them all, or at least for that one that hee forced into the water.

If a stranger drive my Cattle upon the ground of I. S. to the end that hee may distrain them damage-feasant; I may have this Action, or some other for this. Lanes Rep. 67. 9 Ed. 4. 4. So if one take my other goods, and put them on another mans ground, &c.

Emblements.

If I have right to Corn growing, Grasse, Fruit of Trees, Hemp, Flax, or the like things, as emblements, not having any possession thereof, nor of the soil, or ground whereon it groweth, and the Law gives mee a reasonable time to take it away; and if within this time another disturb and hinder mee in the taking of it; I may have this Action for my relief. Coo. upon Lit. 56. Kelw. 125. 160.

If I be to have Corn that I have sowed upon another mans Land, and be disturbed in the taking of it; I may have this Action. Finches Ley. 187.

About Trees and Wood cut.

If the Lord cut down the Coppy-holders Trees, without his leave, or a special custome of the Mannor, to enable him to it; the Coppy-holder may have this Action against the Lord for it. Mich. 3 Jac. B. R. Gros and Abbot. and Trin. 17 Jac. By Justice Haughton. And this notwithstanding hee leave the loppings of them.

Also if the Lord cut down any Tree of his Tenants, that is to have the lopps, and take it away; this Action lyeth. Brownl. 1. part. 197. 23 H. 8.

If I provide Wood for a special purpose, as for Iron, or the like, and one take it away; I may have this Action for my remedy. New B. of Entries. 36, 37.

If A. sell mee six hundred loads of Wood, to be taken by his assignment, and after hee sells four hundred loads to M. to be taken where hee will, after hee assigns the six hundred loads to mee, and I cut it down, and M. takes it away under colour of his Contract; I may have this Action against M. Coo. 5. 24.

If

If the Lord cut down all the Coppy-holders Trees, and doth not leave him fire-wood, &c. the Tenant may have this Action against him. Brownl. 1. part. 231. See Brownl. 1. part 141. 197. 208. 2. part. 57. 331.

If one take away my Pales; it seems, I may have this Action, or Trespasse, at my choice. 15 Ed. 4. 4. By Choke. Pales.

Also this Action will lye for mee against him that shall take my Pigeons with Engines. 16 Ed. 4. 7. Pigeons.

If I send my Servant upon a message of importance, and another having digged a hole in the high-way, into which the Servant falls, and hurts himself, so that hee cannot go any further upon his business; in this Case both the Servant and Master may have each of them this Action for this. Action upon Action.

So likewise in the case of the Smith, where hee pricks the horse of the Servant, being on his journey, to pay money for his Master, to save the penalty of a Bond. Bulstr. 2. part. 134. Smith.

If one challenge my Servant as his, so that hee dares not go abroad; it seems, I may not have an Action for this. Bulstr. 2. 134. Threatning my Servant.

If a Boat be in danger by a storm, and the Boat-man, or a passenger, to save their lives, cast out some of the goods; no Action will lye for this, no more than for the pulling down of a house to stop a fire. Bulstr. 2. part. 280. For casting goods out of a Boat; works of necessity.

If my Servant, or a stranger, shall without authority from mee, land my goods out of a Ship, before the Kings Customs be paid, by which I forfeit them; I may have this Action against him for it. Croo. 2. 266. Lanes Rep. 266. F.N.B. 93; 94. 43 Ed. 3. 3. For landing goods, Customs unpaid.

If I have Common in a waste, and one dig a Pit there, whith my Beast falleth into, and is hurt; I may have this Action: But must be sure to set forth I have Common there, for if my horses be straying there, and take this hurt by that means; no Action will lye for this. Croo. 2. 158.

If one put such things into the water, where a Boat goeth, as occasions the turning of the Boat, and drowning of my Sheep therein; I may have this Action against him. F N B. 92. For overturning a Boat.

If one hath a Dogge, that doth use to bite Men, or Cattle, and hee knows thereof, and yet suffers him to continue, and hee bite mee, my Childe, Servant, or Cattle, whereby I suffer any damage, or lose the service of my Servant, or the like; I may have this Action against the owner of the Dogge. Dyer. 25. pl. 162. 29. pl. 195. 28 H. 6. 7. pl. 7. Lib. Intr. 616. B. sect. 1. Regist. Orig. 110. B. M. A. But here note, About a biting Dogge.

1. That the Dogge must be used to bite. 2. That the Master know thereof, yet sciens is not traverseable, but must be given in evidence. Coo. 4. 188. And therefore when the declaration was Quendam Canem ad mordendum Oves consuetum apud H. scienter retinuit & custodivit, qui quidem Canis, such a time and place killed the Plaintiffs Sheep, for hee might knowingly keep the Dogge, and not know hee was used to bite, &c. it was therefore judged not to be a good declaration. Croo. 1. 350. Traverse.

The Plaintiff in his declaration must shew, that it was his Dogge at the time of the biting, otherwise it shall not be intended. Palche. 9 Jac. B. R. Louder and Sounds. 21 Ed. 4. 22. Dyer. 340. Count.

If A. have such a Dogge, and B. take him out, without the privity of A. and then hee kill my Cattle; in this Case A. must answer them to mee. By Baron Denham at Gloucest. Assizes.

If the owner of the Dogge, after the hurt done, shall bring him to the Master,

Master, Father, or owner of the Cattle, that suffer by him, and bid him do justice upon him; this will excuse him. 7 Ed. 3. Barr. 290. so Exod. 21. 29. 35. Croo. 1. part. 184. See chap. 15. sect. 6. case 5, 9. p. 375, 376.

By a Nusance of dead cattle.

If one have a Beast that died of the Murrain, and hee throw out the inwards, or offal of it in my ground, whereby my Beasts are infected by it, and dye; I may have this Action against him. Stiles Rep. 50.

For putting poison into my meat.

If one put poison into my meat, and I be hurt by it; I may have this Action against him. Regist. Orig. 102.

Sect. 11.

By a Physician or Chirurgion.

If a man that is no Physician or Chirurgion professed, shall for nothing, but out of good will, advise a man to use a medicine that doth not so well agree with him, or shall negligently apply a medicine, without taking mony; this is nothing, nor will any Action lye for this: But if hee take mony for such cures. Quere. So if I give one counsel to give a medicine to a Horse, and do it for nothing, and the Horse dye of it; no Action will lye against mee for this; yet if there be malice in it, and it be done of purpose, it may be more questionable. 19 H. 5. 49. Action, 80. 10. 48 Ed. 3. 6. Writ. 627. But on the other side, if a Physician, or Chirurgion undertake a cure, and neglect it, or apply contrary medicines by himself, or servants; this Action will lye. 19 H. 6. 49. 48 Ed. 3. 6. 11 H. 6. 18. 21 *H.* 6. 55. 11 Ed. 4. 6. 19 H. 6. 49. 14 *H.* 6. 18. 21 *H.* 6. 55. Regist. Orig. 105. B. 112. A. And this where no warranty of cure is, for there, if hee do his best, hee is excusable: But if hee warrant, or promise cure for a good consideration, hee must do it, or will be liable to Action. 17 Ed. 4. 25. Doct. and Stud. 105. Plow. 305. Bulstr. 2. 332.

If one take upon him to cure another of a wound, and cannot do it; this Action lyeth. Bulstr. 2. 333.

Barber.

If a Barber shave mee with an unwholsome Razor, so that my face is hurt thereby, or if hee cut my face with any Razor; I may have this Action against him. F. N. B. 94. 7 H. 6. 5. Old B. of Entries. 2.

For plundring.

This Action was brought against a man for plundring him of his Packs. Stiles Rep. 358.

By a Servant for breach of Trust.

If my Bayliff, or other Servant, contrary to his trust, shall either wilfully, or negligently hurt mee in my business, wherein hee is trusted for mee; I may have this Action against him, for his wages is certain; and hee hath his Action to recover it. 2 H. 7. 11. 3 *H.* 6. 36. B. And therefore

Bayliff.

Butler.

Plow-man.

Shepherd.

If my Bayliff that doth keep my Cattle kill them, or otherwise abuse them, lose, or sell them; or cut down my Trees, having charge of my Land, or the like. Or my Butler break my Pamper, or the like. 2 H. 7. 1. See chap. 6. chap. 7. Or my Plow-man drive my Cattle so hard as to kill, or hurt them. Coo. 5. 14. Or my Shepherd suffer my Sheep to be drowned, or turn scabby by his neglect; I may have this Action against them. 2 H. 7. 1. Coo. 5. 13. 18 Ed. 4. 20. 27. Broo. 99. See chap. 6. chap. 7. That for a voluntary Trespasse, in these Cases, Trespasse, and a Trespasse on the Case is to be had. Croo. 1. last publisht. 777. 784.

If my Bayliff, or Servant be to pay mony for mee to one, and doth it not, by which I suffer losse; I may have this Action 20 *H.* 6. 9.

By a work-man or servant, for not doing, or mis-doing his work.

If my Work-man be retained to do my work, and doth it amisse; I may have this Action against him. 3 H. 6. 36. 14 H. 6. 18.

Or if my servant refuse, or omit to do the work of his place, and I have damage by it; I may have this Action against him. Regist. Orig. 101.

If one promise mee that is my Bayliff, to keep my Cattle safe, and doth

noth not so; I may have this Action. Lib. Intr. 9. A. sect. 1. and fol. 3. sect. 1.

But if hee promise to keep my goods, and after refuseth to undertake them, no Action will lye for this. Doct. and Stud. 102. B. Upon a Promise.

If one promise to make a Coach, repair a House, or to do any such like thing, or to do any kind of work, and doth it not well, but deceitfully, or simply doth marre my work; I may have this Action: But in all such kind of Cases, there must be some good Consideration for it, otherwise it will be but Nudum pactum, ex quo non oritur Actio. N.B. 94. A. 3 H. 6. pl. 33. Regist. Orig. 110. B.

If a Carpenter undertake to buildmee a house in one form, and buildeth it in another; I may have this Action. N.B. 145. G. 2 H. 4. 9. 24 H. 7. 41. 20 H. 6. 35.

If one undertake to set Plants for mee, or any such like work, and doth it deceitfully; I may have this Action. Old Book of Entries. fol. 15.

If one promise to scoure my ditch, or the like work, and doth it not, by which my ground is drowned, or I have any special damage; I may have this Action against him: But there must be some consideration to binde a Labourer: Or it must be the Servants work in his place, or else it will not be actionable. 3 H. 6. 36. F.N.B. 94. A. 3 H. 6. pl. 33. Regist. Orig. 105. B. See more chap. 7. sect. 1, 2, &c. Coo. 11. 94. For not doing work.

If I be a Prisoner, and the Gaolor abuse mee, by putting on Irons on mee, or putting a mee in the stocks, or the like, or not giving mee sustenance, or the like, for my money, being a prisoner for debt, &c. or as my Case is; I may have this Action, N.B. 93 H. By a Gaolor to his prisoner.

If a Taylor spoil my Garment in the making; I may have this Action, and this without any consideration given, or promise to do it well. F.N.B. 94. 7 H. 6. 5. Taylor.

And if men of other Trades upon agreement with consideration, undertake the work of their Trade, and do it not well; this Action lyeth against them. 46 Ed. 3. 19. Old B. of Entries. fol. 2. 14 H. 7. 22. Bullstr. 2. part. 196, 197. 46 Ed. 3. 19.

If a Farrier take upon him to cure my Horse, and apply unwholsome medicines, &c. this Action lyes: So if hee warrant him, and doth not cure him. Brop. Action, &c. 24. Farrier or Smith.

If a Smith undertake to shoe my Horse, and prick him; so if any other Artificer shall not do his work well; I may have this Action. 46 Ed. 3. 2. N.B. 94. D. 18 Ed. 3. 6. Sect. 12.

If a Smith take my Horse to shoe, and doth it not. 14 H. 6. 18. Or undertake to cure him, and doth it not: And it is not sufficient to say, he did his best. 19 H. 6. 49. Regist. Orig. 119. B. But if hee onely take him to curb, and do not promise to cure him, it is otherwise. 43 Ed. 3. 33. 45 Ed. 3. 17. 48 Ed. 3. 6. 27 Ass. 56. see chap. 7.

Also this Action will lye against a Smith that refuseth to shoe my Horse, where hee hath necessaries to do it, and I tender him his pay for it. 14 H. 6. 18. 18 H. 7. 50. pl. 4.

If a Farrier undertake the cure of my Horse, and doth apply to him contrary and dangerous medicines, and thereby hurt him; I may have this Action: But if no default be in him, it lyeth not, and yet his warranty or promise to cure will make him chargeable, if hee do it not. 19 H. 6. 47. 49. 43 Ed. 3. 33. 48 Ed. 3. 6. Bulstr. 2. part. 334. See chap. 7. sect. 1. Warranty to cure a Horse.

If a Smith cly my Horse in the shoing of him; I may have this Action: And if the Master send his Servant about an important business, as to pay money, or the like, and the Smith cly his Horse, and lame him,

so

so that hee cannot come in time to pay his mony, or have any special losse by it; the Master and Servant may each of them have this Action against him. Bulstr. 2. part. 334.

If a Smith undertake to shoe my Horse, and prick him, so that I lose the use of him for a time, all it there be no agreement, warranty, or wages promised, or given; yet this misdoing is actionable, and is all one whether the Horse were brought by my self, or Servant. 46 Ed. 3. 19. Action, &c. 35. Fitz. 94. 17 Ed. 4. 43. 11 Ed. 6. 4. 14 H. 6. 18. 3 H. 6. 36. Regist. Orig. 106. A.

Against the Lord by a Copy-holder.

A Coppy-holder by custome may name who shall succeed him, and pay hee may be admitted, and offer a reasonable Fine; But if the Lord refuse to admit him, hee may not have this Action against the Lord. Pasche. 13 Jac. B. R. Ford and Hoskins. Croo. 2. 368. See the case chap. 15. sect. 6. case 26.

For Refusal to admit a Tenant.

Also this Action will not lye against the Lord of a Mannor for refusal to admit the Plaintiff unto a Coppy-hold estate, being nominated thereunto by the present Coppy-holder, according to the Custome of the Mannor. Bulstr. 2. part. 336.

Nor against a Lord, for his refusal to hold a Court, nor admit in another case, without the help of a special Custome to warrant the Action. Bulstr. 2. part. 337, 338.

But if a Lord of antient Demesne will not hold his Court of Pallice, and I a Demandant in a Writ of Right there have damage by it; I may have this Action. 11 Ed. 2. Action upon the Case. 46. 14 Ed. 3. Action of the Case. 39.

For refusing to make my estate

If one sell mee his Land for twenty pound paid him, and then will not make mee an assurance of it; I may have this Action. 21 H. 7. 41. Action, &c. 51. 22 H. 6. 44.

If one sell Land to mee, or promise mee the possession of Land, or promise to make mee an estate of Land for good consideration, and doth not, I may have this Action. 3 H. 7. 14. 14 H. 8. 15. Regist. 112. A.

Feoffee in trust break his trust of Land.

But this Action will not lye against a Feoffee, or Lessee in trust, that shall not perform his trust of Land.

Refusal to attorn, to make livery of Seisin

Nor against a Tenant for life or years that will not attorn.

Nor against a man that hath made a Feoffment, and will not give livery of Seisin upon it.

Refusal to inroll a Deed.

Nor for not presenting another to a Benefice; as if one promise to present I. S. and hee presents another; nor generally where hee that would have the thing, hath some right and interest in, and to the thing: But in all cases of Ministerial Offices, if they refuse to do their Offices, Actions upon the Case will lye against them, as against the Clerk of the Inrolments: As if a man hath a Deed to be inrolled within six months, or else hee loseth his Land, if the Clerk of the Inrolments will not inroll it; this Action will lye against him. Bulstr. 2. 336.

Ordinary refuse to institute or induct.

But if a Bishop refuse to induct a Parson; or a Steward to make an Entry, where it ought to be done; it is said, no Action will lye for any of these things. And it is said, if an Arch-Deacon refuse to induct mee, (being a Clerk) or the Ordinary to institute mee; I may have this Action. 26 H. 8. 3. N. B. 47. M. 12 Jac. B. R. Poole and Godfrey. Coo. 12. 128. 47 H. 6. 8. 7 Ed. 4. 21. 8 Ed. 4. 14. 17. And so this Action lyeth against a Spiritual Officer, as in this, and other Cases. But in case where the proceedings in the Spiritual Court be all Coram non Judice, there it is otherwise. Bulstr. 2. part. 266.

Presentation, Nomination.

If A. hath the nomination, and B. the presentation to a Spiritual Living,

Living, and A. doth nominate mée, but B. refuseth to present mée; I may not have this Action against B. for this. Pasche. 13 Jac. B. R. Ford and Hoskins Case.

If one man be by prescription to finde a Priest in a place, and doth not; happily this Action may lye: But if he be to be provided by the Lord and Tenants of a Mannor, it is otherwise. 21 H. 7. 5. 22 H. 6. 46. Coo. 4. Action, &c. 12. To finde a Priest.

If one instituted have a Mandat from the Bishop, and hee refuse to do according to his Mandat; an Action will lye for this refusal. Bulstr. 2. 336.

The Bédle of a Hundred brought this Action against many, and prescribes to have three Gallons of the best Bér of every Brewer for seven pence, and good; 1. Because hee need not shew what estate. 2. It is gon against many. 19 R. 2. Action, &c. 51. Beedle of a Hundred.

This Action will lye against him which ought to inclose, and doth not, by which my grasse is eaten up. 11 R. 2. Action on the Case. 36. Enclosure.

But if it be betwéen two houses, a Curia claudenda lyes. *Curia Claudenda.*

If I, being a stranger, and not of the Corporation of Mercers in London, and receive of R. in London forty pounds worth of Silk to be woven for one R. in London, and carrie it to *Hackney*, and there weave it, and bring it back to London, and receive money for it; no Action will lye for the Corporation against mee for this. Croo. 1. last publisht. 803. No more than if a Taylor buy Cloth within London, or receive any other thing there, and make a Garment thereof in the Country; for this is no intermedling with their Trade. Croo. 1. last publisht.

Also this Action will not lye against one for taking of a false Oath in a Suit, by which I am damnified. Owens Rep. 158. Sect. 13.

If my Lessor, that is bound by Law to repair my house, pay subsidies, or the like, neglect it, and I suffer thereby; I may have this Action against him. Dyer. 36. pl. 37. 21 H. 7. 12. 22 *H.* 6. 14. Reparations Of a House.

If one be, time out of mind, to repair a Hedge between my Close and his, and hee let it be unrepaired, that my Cattle go into his, or other mens grounds; or other mens Cattle go into my ground, by reason of which, I have damage; I may have this Action for it. Croo. 2. 669. 20 Jac. B. R. Of a Hedge.

If one ought to repair a Bridge, by which I have a way to my Mannor, and hee do it not; I may have this Action. 11 H. 4. 82. 45 Ed. 3. 17. Action, &c. 36, 37. Of a Bridge.

So if one be to repair or scoure a Ditch, and do it not, by which my Land is drowned, or I have any special damage; I may have this Action. 11 H. 4. 82. Action, &c. 30. 34. 36. F. N. B. 93. G. Of a Ditch.

So if hee repair not a Wall, or Bank of a River, whereby my Land is surrounded; but in these cases, and such like, I must averre some special damage to mee, by the not doing thereof. Action upon, &c. 36, 37. 50. 29 Ed. 3. 32. Trin. 20 Jac. B. R. Of a Wall of Bank. Averment.

If the high-way be to be repaired by any special person, and is not, and I have any special damage thereby; I may have this Action. 5 Ed. 4. 3. per Heidon. See Nusance. Of the High-way.

Also this Action will lye for mee against him which ought to repair a Mound, or Bank of the Sea, or of any great River, and doth it not, by which my Land is drowned. 19 Ed. 3. 32. 12 *H.* 4. 7. N. B. 93. G. 7 *H.* 4. 31. pl. 13. Mounds of Banks of Rivers.

So of the Bank of a River. N. B. 93. G. 15 Ed. 4. 18. 45 Ed. 3. 17. 7 *H.* 4. 8. 11 H. 4. 82. 33 *H.* 6. 26. But if the breach and inundation be

by any extraordinary accident; as by a Tempest, or the like; no Action lyeth. 29 Ed. 3. 32. pl. 49. Coo. 10. 139.

Gutter. So for not repairing of a Gutter. Lib. Intr. 10. D. sect. 1.

House. So for not repairing of a House ready to fall on my House. Croo. 22 H. 7. 98. pl. 4.

Banks or Hedges. If one be tyed by prescription or custome, time out of mind, to repair the Banks of the Sea, Severne, or other River, or to make a hedge between his ground and mine, and doth it, but doth it not sufficiently, by which I have any special damage; I may have this Action. Bulst. 2. part. 280.

Bridges, &c. not repaired, whereby, &c. If there be a charge upon any man, by reason of the Tenure of his House, or Land, to repair any Bank, Bridge, Gutter, or private way, or the like, and doth it not, and thereby I have any special damage; I may have this Action. Old B. of Entries. 10.

Inne-keeper refusing to receive mee, &c. Sect. 14. This Action will lye against an Inne-keeper, that refuseth to entertain mee for my mony, having spare room to do it. 39 H. 6. 18. 18 H. 7. 50. pl. 4. 14 H. 7. 22. Dyer, 158.

So if a Victualler refuse to sell to mee Victuals for my mony. 39 H. 6. 18.

Carrier. If a Carrier undertake to carry my goods safe, or one undertake to carry my Wine, or Oyl, and weak the Pipe or Vessel by negligence; I may have this Action. 2 H. 7. 11. Lib. Intr. 2. D. sect. 1. Regist. 110. A. See chap. 7. sect. 1.

Or if such a common Carrier (albeit hee be but newly a Carrier, or carry but for some few persons only, if hee carry for mony) take any thing from mee to carry, and do hurt, or impair it himself, or suffer it to be hurt by another, by his apparent negligence, as if he over-load his horse, and by that means fall into the water, or drive by night, or out of the way, and is thereby robbed; I may have this Action against him. M. 21 Jac. B. R.

And yet a Carrier may by special agreement in his undertaking of the Carriage, avoid this Action. Doct. and Stud. 139. Fitz. 14, 15.

Also if my goods be lost by his negligence; I may have this Action: And therefore.

Ferry. If a Ferry-man undertake to carry mee over the water, and doth it not; I may have this Action, and that without any consideration, for his pay is certain. 22. Ass. 41.

If a Ferry-man undertake to carry any thing for mee over the water, and by his default it taketh hurt, or is spoiled in, or after the carriage, while in his custody; I may have this remedy against him. Adjudged. Partridge's Case. See chap. 7. As

If a Ferry-man take upon him to carry my horse over the River, and surcharge his Boat, so that my horse is cast away; I may have this Action for it. 22 Ass. pl. 41. Action, &c. 40.

Retainer. If I retain one to purchase Land for mee, and hee doth it not; I may have this Action; but if hee do his indeavour, no Action lyeth: And yet if

Breach of trust. hee be of counsel with the contrary party; Action lyeth. 11 H. 6. 18. pl. 10. & 55. pl. 26.

But no Action will lye against a man for doing any thing of necessity, and for publick good; as where a Ship, or Boat is over-laden, and in danger by a Tempest, and the passengers cast out the goods to save the mens lives, or pull down a house in time of fire, &c. Coo. 12. 63. Dyer. 36. 18 Ed. 4. 23. 12 H. 8. 15.

To plow my Land. If one agree to plow my Land, and doth it not at a seasonable time, when

when hee may do it so; I may have this Action. 14 H. 6. 18. 3 H. 6. 36.

If I be a Baker, and buy Corn of one, which hee promiseth to deliver mee such a day, and hee doth not; I may have this Action for it. Brownl. 1. part. 19. Upon a sale.

This Action may lye against him that hath, and useth such a Crane, whereby my goods put into it are spoiled. Lib. Intr. 3. C. sect. 1. Cranage.

Also this Action lyes for abusing of a Licence. 21 Ed. 4. 76. Licence abused.

If a Feoffee to use, han not pleaned according to the directions of the Feoffer; the Feoffer might have had this Action. 14 H. 8. 24. B. pl. 2. Breach of trust.

If one have a room over mee in a City, or other place, and so carry himself in it, as to annoy mee that am under him; as if hee have a Shop, or Ware-house over mee, and I have a Cellar under it, and hee lay such an extraordinary weight of goods more than usually have been, and so break it down upon mee, and trespasse mee; I may have this Action for it. Popham. 46. Nusance.

If a Guardian be to sue for an Infant, and do it not as hee should faithfully, the Infant may have this remedy against him. Dyer. 361. Kelw. 135. Broo. 118. By a Guardian, breach of trust.

If one that ought to do suit at my Court, or grinde at my Mill, pay Toll at my Fair, or Market, or to agist my Land with his Cattle, refuse to do it, and do it not; I may have remedy by this Action. 7 H. 4. 9. 44. 21 H. 7. 16. 22 H. 6. 14. Brownl. 1. part. 204. Not doing suit to mee.

If one procure a Commission of Bankerupts to be sued out against mee of malice, and without good cause; it seems, if I have any special damage hereby, I may have this Action for my remedy. Stiles Rep. 3. chap. 15. sect. 6. case 30. For suing out a commission of Bankerupts.

CHAP. XIII.

Where an Action upon the Case shall be said to be gone and discharged, and what may be said a good Plea in discharge of it.

As to this, it is to be known, That this Action of the Case, as it may arise many waies, so it may also fall, and be determined again many waies: And this is sometimes by the act of God, as by death: And this is sometimes by the death of one of the parties, and sometimes by the death of another party; and sometimes this may be by the act of the parties themselves, or one of them; and so this Action may be gone and discharged, by a Judgement or Recovery in a former Action for the same cause, by the taking of a better Security, by a Release, Countermand, Accord, or by some other subsequent agreement between the parties themselves; by the determination of the Contract it self, upon which it is founded: and sometimes it is by the act of the parties themselves, and by the act of a stranger together; as by Arbitrement, &c. For the opening whereof, take these following Cases. Sect. 1.

1. That an Action will be gone, when the foundation of it is gone: as when a Contract is determined, the Action annexed to, and dependant upon it is gone also.

2. If I bring an Action upon a Contract, and get a Judgement for

By a Judgement, or Recovery in a former Action. Of a Contract.

damages in the Suit, hereby the Contract is determined, and no Action can be brought upon it afterwards, although execution be not yet made. 9 Ed. 4. 54. Dyer. 21. 39 H. 6. 34.

If I have been barred in another Suit of another nature for the same cause, by Demurrer, or upon a Confession, or upon a Verdict, or by a Stranger Law; this is an end of this Suit, and will be a barre to it for ever. 12 Ed. 4. 13. Estoppel. 78. Dyer. 130. Broo. sect. 197.

So if an Action of debt hath been brought upon the Contract (it being an Executory Contract, and the Plaintiff hath recovered in it) by this; this Action is gone, and it may not now be sued in such a case. Coo. 4. 94. Croo. 1. 24.

But if another Suit be brought upon the same Cause, and no Judgement be had in it; this will not discharge the former Suit, nor may it be pleaded in Barre to it. Fitz. Action upon the Case. 105.

If an Action upon the Case be brought upon an Assumpsit, a Recovery or Barre in this Action, will be a good Barre in an Action of Debt brought upon the same Contract: So vice versa Recovery, or Barre in an Action of Debt, is a good Barre in an Action upon the Case upon an Assumpsit. Coo. 4. 94. 12 Ed. 4. 13. Broo. Action, &c. 105. 2 R. 3. 14.

3. That a Retraxit entred by the Plaintiff in any such Action, will be a Barre to him in all other Actions of the like, or of an inferiour nature. Coo. upon Lit. 139. But that an Action is depending in an inferiour Court for the same Cause, is no Plea to Barre in this Action. Coo. 5. 61.

By death of one of the parties.

4. This Action may determine and be gone, by the death either of the party that doth, or of the party that suffereth the wrong; for it is a rule, that Actio personalis moritur cum persona: And this is to be understood of every wrong that is done ex maleficio; as by Battery, Slander, Conspiracy, by a Rescue, by the suffering of an Escape, and so for every wrong done ex maleficio, by Non-feasance, Feasance, and Misfeasance, and the like. Dyer. 320. Coo. 9. 86. 93. Coo. 4.

So if I promise to appear the next Term in such a Court, and dye before the Term; this is gone. 21 Ed. 4. 53. But in case of Contracts for the payment of mony, and some other such like things, it is otherwise, for this is not so annexed to the person, as to dye with him. Dyer. 114. Coo. upon Lit. 53. for there the Action shall continue for, and against the Executor and Administrator, who may charge and be charged upon it as the Intestate, or Testator himself might have done; and for this, see Croo. 1. last publishr. 625. Where two Sheriffs were sued upon an Escape, and one of them dyed, that the Action did survive against the other. And the death of one of the Plaintiffs will not determine an Action of Trover and Conversion. Bulstr. 2. part. 262.

If I be an Artist, and one promise me ten pound to teach him in my Art seven years, and I dye before the seven years end; by this the Contract is expired, and no Action will lye upon it: So that if the mony be not paid, it is lost, and my Executor or Administrator hath no remedy for it: And if it be paid to me, or secured by bond; hee that hath paid, or secured it, is remediless, for I, and my Executors, and Administrators shall retain it. 21 Ed. 2. 12.

So if the Contract be, that I shall serve another man a year for so much, and I dye within the year. 10 Ed. 4. 18. 10 H. 6. 25. And yet if in these cases mony were to be paid quarterly, and the death be not till the quarter day be past, he may perhaps recover the last quarters Rent, but the rest will be lost.

And

And yet if a Sheriff have levied money for me upon an execution, and dye; my remedy is not gone against him, as it is upon an Escape. Latch. Rep. 167. Dyer. 271. 322.

An Assumpsit was brought by two, and one of them dyed between Verdict and Judgement; this did abate the Writ, and the Judgement was reversed. Croo. 1. last publisht. 165. Bendl. 147. Bulstr. Rep. 262.

The heir shall not be charged for an escape suffered by his Ancestor. Dyer. 271. 322. See more in Latches Rep. 167, 168.

If an agreement be to pay so much for a thing sold, as I. S. shall set down, and I. S. dye before he doth set down; the Contract is ended, and the Action gone. 14 H. 8. 19. 1. — By the death of a stranger.

If I marry with A. Executrix to B. her former Husband, and C. D. indebted to the former Husband, promise mee, that if I will forbear my Suit against him for this debt till Michaelmas next, he will pay me, if he be dead at the time of the promise made, it is not good, but if he be alive at the time, and dye after, it seems the promise is not gone by her death. Yelverton. 84. — Sect. 2.

If a debt be due to me upon an Executory Contract, and I take a bond, or bill obligatory for it, or for a part of it of him that owes it; by this the whole Contract is determined, and the Action that lay upon the Contract discharged, and no Action can be brought upon it afterwards: But if the second Security be only a Writing; or Writing indented, or a Writing sealed onely, and not sealed and delivered, and so made a Deed, this will not determine the Contract. And if I take a Bond, or Bill, that is not good in Law, or that shall afterwards become void in Law; or a Bond or Bill is made to me for it, but I never accepted of it: Or if I take an Obligation that is good, and doth continue good, yet if it be from another person, and not the person that was bound by the promise; in these cases the Contract is not determined. Dyer. 21. 130. 21 H. 7. 5. F. N. B. 121. Croo. 6. 45. 3 H. 4. 17. Fitz. Debt. 66. Goldsb. 155. pl. 84. Broo. Contract. 29. Brownl. 57. pl. 14 Yelverton. 171. Stiles Rep. 309. — By the taking of a better security.

So a second Assumpsit also may discharge the first Assumpsit, and consequently the Action upon it. Noys Rep. 140.

If there be a parol agreement, and this be put in writing to make a Deed of it; the parol agreement is gone, and no Action will lye upon it. Stiles Rep. 19.

A Contract, and the Action depending upon it, may be discharged, and gone, by an Arbitrement made upon a Reference by both the parties thereunto. 4 H. 6. 17. Hobb. pl. 27. 10 Ed. 4. 18. — By Arbitrement or Accord

So also by an Accord if it be executed, otherwise not. Croo. 1. last publisht. 305, 306.

Where two Actions are brought, though of severed natures, and the one of them doth depend upon the other; the abatement of one of them shall abate the other. Stiles Rep. 5. But where one brings an Action for two things, and it will not lye for one of them, but a better Action will lye; there it shall abate for that part onely: But if no better Action will lye, then it will abate for all. Croo. 11. 42. — By Abatement.

If a Contract be between me and another, that he shall serve me a year for so much, and he leave my service, or we part by agreement within the year; by either of these the Contract is gone, and the Action with it. 10 Ed. 4. 18. 10 H. 6. 25. — By a subsequent Agreement, or Act.

A Contract may be discharged by a Release in Deed, or in Law, so that if an Assumpsit be made to me by another, and I release it to him, or by two others, and I release to one of them; this is a discharge of the Contract and Action upon it. Hobb. Rep. 91.

If

If one be in execution at my Suit, and another say to mée, deliver him out of execution, and what it cost you, I will repay. And before I do any thing, hée doth forbid mee in it, and saith, hée will not stand to his promise; in this case the promise is not discharged: For albeit one may discharge an Assumpsit made unto, yet hée cannot discharge an Assumpsit made by himself. Croo. 2. 483.

Release.

Parol discharge good to discharge a parol promise.

A Parol-promise, or Contract may be discharged, where it is executory, and before it be broken by word of mouth, for one Parol-contract may be discharged by another, eodem modo quo, &c. And therefore if the Plaintiff before any breach of the promise, discharge the other party of the promise; this will determine it, and all Actions upon it. Pasche. 24 Car. 1. B.R. Stiles Regist. 31. 75. Croo. 1. part. 279. But after a promise is broken, no Parol-contract will discharge it. Stiles Regist. 31. 75. Croo. 1. part. 279. Stiles Rep. 303.

A promise may be discharged by words, without any consideration at all, albeit it be made upon consideration: As if two agrée, that one of them shall go with him in such a Journey, and help him in such a busnesse, and that hee shall have so much for it: And before any thing done, it is agréed amongst them, that nothing shall be done, or paid; this is an end, and discharge of the first promise. Croo. 2. 620.

If one promise to enfeoffe mee of Land upon request, and I request, and hée refuseth, and after, and before any Suit brought, hée doth it, and I accept it; now the Action is by this discharged. Bulstr. 1. part. 38, 39.

If a Physician or Chirurgion be retained, and engaged in a Cure; or a Carpenter in a building for mee, and after, and before it be done, I discharge him again, before the work is done, the Contract is at an end; and this may be by word of mouth: and if there were a certain summe to be paid for the work, I must pay it all; if not, I must pay for that which is done, what shall be reasonable. 18 Ed. 4. 8. 19 Ed. 4. 2. Bulstr. 2. part. 333.

By Release, &c.

If one had promised to my wife, whiles she was sole, that if she would at his request marry one Thomas Mason, that he after the death of Thomas Mason would pay her forty shillings a year, during her life; Thomas Mason by déed released him of it, during the Marriage, all Actions, Quarrels, Demands and Controversies whatsoever; it was agreed to be no discharge of this future promise; but if the Release had bén of all Promises, or of all Actions, or Quarrels, that hée or his wife had, or might have against her husband, or her; this had discharged the promise. Bendl. Rep. 147. Brownl. and Goldsb. 15. Hutton. 17. Croo. 2. 228. 571.

If one, in consideration that I will lend him ten pound, and release to him all demands, that hée will do such a thing, and hée doth release, to make himself capable of the promise; this Release of all demands shall not discharge this Assumpsit. Croo. 2. 623.

If one promise to mée (that am a single woman) in consideration that I will marry him, that if I over-live him, that hée will leave mée worth a hundred pound, and I marry him, and hée dye, By three Judges, the promise is not by this discharged. Brownl. and Goldsb. 18, 19. Hutton. 17. Croo. 2. 57. 571.

If the promise be to pay ten pound for two weighs of Corn delivered; and after hée to whom the promise is made, in consideration that some of the Corn was spoiled by Tempest, and that hée that was to pay it, would pay a lesse summe; hée dis discharge him of his promise; this is no good discharge,

discharge, for there is no consideration of it; nor is it executed if the mony be not paid. Leonard. Rep. pl. 23.

If an Assumpsit be to assure Land at Michaelmas next, and it is not done then, an Action may lye for this: But if afterwards the parties agree, that if the thing by such a further day given to do it, that no benefit shall be taken upon the first breach of promise; in this case, if this be afterwards done accordingly, no advantage can be taken of the first breach; for the Contract, and the Action depending upon it, is discharged by the latter agreement. Bulstr. 1. part. 38, 39.

If a Contract be between mee and A. that M. S. shall marry mee by such a day, and before the day A. himself marry her; the Contract is determined. 21 Ed. 4. 53.

A Contract about a Lease-parol for Rent may determine by the Entry of one that hath a better Title, if hee enter upon the whole: So, to say hee had nothing in the Land at the time of the Lease, may be a good Plea in Barre. Finches Ley. 45. Lit. sect. 58. Broo. sect. 62. 135.

So if the Lessor himself enter upon the Land, for by this the Rent is suspended, and it cannot be sued for. 9 Ed. 4. 1. Croo. 1. last publisht. 150. 299, 300.

If one sell mee Trees from off the Land of his Wife for mony, and I cut some of them before his Wife dye, and so I be prevented to cut the rest of them, yet I must pay all the mony: But if the Contract bee to pay all the mony such a day, and not before, and I cut part of them, and shee dye before the day; in this case I shall not be forced to pay any of the mony. 18 Ed. 4. 6. Apportionment of a Contract. Sect. 3.

If I make a Lease-parol of Lands and Goods together, by one Contract, for one entire summe of mony, and the Goods be taken from him by the right owner, before the mony is paid, yet I may recover all the mony. So if I sell two horses for ten pound, and one of them is another mans, who doth take him again from him; I may recover the whole mony; But hee may have his Action upon the Case against mee for the deceit: So where all that is sold was another mans, and it be taken away by the right owner. Coo. 3. 23. 9 Ed. 4. 1. 7 H. 7. 4. Deceit.

If one borrow a horse of J. S. for such a Journey, and then to be returned, and before it can be returned, the owner take it away; this, it seems, will discharge for any Action before. Yelverton. Rep. 22.

If one sell mee the horse or goods of another, for mony to be paid at a day, and before the day come, the true owner doth take his horse or goods from mee again: this doth not discharge the debt, for the seller will have his Action for the mony; but I may have Action for the deceit. Finches Ley. 45. Coo. 3. 20. Apportionment of a Contract. Deceit.

If A. serve mee a year, and I promise him twenty pound, and he depart within the time, the promise is gone.

If I be bound to pay another mony on a Contract, and a stranger with my consent deliver him a horse for it, without any new agreement; this doth not discharge the Debt, or Action for it. Brownl. 77. pl. 14. See more Croo. 1. last publisht. 150. Croo. 1, 299.

CHAP.

CHAP. XIV.

Of the Process and Pleading in these Actions.

Against whom the Action may be. Sect. 1.

THat where a Joynt-Action doth lye against divers, and some of their names are, and some of them are not known; the Action may bee brought against them that are known, with a simul cum aliis, &c. Stiles Regist. 8.

Declaration.

There may be faults in the Declaration, that being demurred unto, will make it naught; and that after pleading, and a Verdict given for the Plaintiff, will be cured, and then will not hurt the Declaration. Croo. 1. last publisht. 427.

Plea.

In an Action for a Non-feasance not guilty is not any Plea, for they are two Negatives, which cannot make an Issue, more than two Affirmatives. 32 H. 6. 23. Croo. 1. last publisht. 569.

The Writ in this Action must be as certain as the Declaration, both for time and place; and it must have as much as is in the Count, but the year, and day, the quantity, and certainty of Land, where it must be shewed. 21 H. 7. 91. 38 H. 6. 9.

Writ.

This Writ must not be vi & armis, but where there be two causes of the Action, Causa Causans, & Causa Causata, there the former may be said to be vi & armis. Coo. 9. 50.

How the Writ must be about a Cure. 43 Ed. 3. 38. and 6. Writ. 627. About disturbance in a Franchize. 9 H. 6. 45. 20 H. 7. 1. About the escape of a prisoner. N.B. 95. B. About Trover, &c. Croo. 1. 63. Hutton. 394.

Processe.

See for this Croo. 1. last publisht. 79. 824. 829. Croo. 2. 307. The Processe in Actions of the Case are the same with Action of Debt and Trespasse. Stat. 10 H. 7. cap. 9. Coo. 10. 72. About this in all Cases, Croo. 1. part. 236. 7.

Declaration.

If the promise be grounded on a former Debt, in some cases it will be needful to shew the cause of the former Debt how it grew due; for this see Stiles 548. 593. 642.

If one Contract with another to take his Son Apprentice, and finde him Cloths, &c. And the Declaration is, that hee did not finde him Cloths, &c. but did not set forth that hee was bound Apprentice; this is defective, Bulstr. 3. part. 221.

An Inducement to a promise need not to be alledged for certainty in a Declaration, as the things which are the foundation of the Action; and therefore it sufficeth to alledge them generally without certainty of name, place, and person. Yelverton. 17.

Indebitatus existit.

If one declare that D. is indebted to him forty pound, & sic indebitatus existens: In consideration inde assumpsit solvere upon request, &c. it was adjudged naught, because hee doth not shew for what cause hee was indebted: But where it is in consideration of Forbearance till such a day, or upon a special promise, there it may be good, so alledged. Croo. 3. 642.

Insimul computaverunt.

If one declare in Assumpsit, that the Defendant being to account with the Plaintiff pro diversis debitis insimul computaverint, and found upon account indebted so much. In consideration inde the same day promised payment thereof at a certain day, and it was held a good Declaration, albeit there were no forbearance of the debt set forth. Bulstr. 3. part. 208.

The promise is supposed to be, provide for such a sick man necessaries, and

and I will pay for them, and he declared that he found him necessaries to such a summe, and did not set forth the particulars, yet it was resolved to be good. Bulstr. 3. 31.

Where a promise is of two parts, or hath two branches, there he may lay the breach to be in either of them. Croo. 2. 195. Promise of two parts.

It doth generally suffice, and is most proper for the Plaintiff to lay the breach as the promise is made. Yelverton. 40.

If it appear by a mans own shewing, that he sues before his cause of Action doth arise (be the cause never so good) this Action is naught. Yelverton. 70. Bendl. 158. Hobb. 153.

There must be sufficient certainty in the Declaration, for incertainty may marre it. See for this Yelverton. 110, 111. Declaration. Certainty.

The Declaration was solvere, and said not to whom, yet adjudged good. Noys Rep. 38, 39.

A Declaration in an Action of the Case pro diversis mercimoniis is good; but not in an Action of Debt Bendl. 139.

A consideration is not traverseable upon an Assumpsit, but the general Issue is to be pleaded, and the Consideration must be given in evidence. Hetley. Rep. 59. Traverse.

In cases where a man is by promise to pay money, or do some other thing upon request, there must be a precise Request alledged, and the year, day, and place of the Request expressed, for the Defendant is not otherwise chargeable in an Assumpsit. And when a Defendant is chargeable upon a Collateral promise, and not for a meer debt, there ought to be a request precisely alledged. But in an Assumpsit for debt, where a duty was due before, that being but in a nature of a debt, the general allegation, licit sæpius requisitus is sufficient. Croo. 2. 183. Request. Sect. 2.

A Declaration sets forth a promise to pay cuidam Fountain, leaving out his name of Baptism, it seems not good. Siles Rep. 153. Declaration. Incertainty.

An Action was brought upon an Indebitatus for a hundred Calfskins, sold by the Plaintiff to the Defendant, at eighteen shillings a piece, which amounts to a hundred and ninety pounds; it seems, this mistake in casting makes the Declaration naught. Siles. 214. *Indebitatus.*

The Declaration was, that whereas he sold to the Plaintiff a pack of Wool for twenty pound to be paid at a day certain, and licit sæpius requisitus, at such a day, and place, and yet he has not paid it; And that he sold the Defendant another pack of Wool for ten pound to be paid when required; Et licit similiter requisitus, &c. without alledging the day, and place, yet it was adjudged good, for it shall refer to the first day. Croo. 2. last publisht. 210. Declaration.

In this Action upon an Assumpsit, if the consideration be executory, then the Declaration must set forth the time and place when, and where made, and after it must be averred in facto, when it was performed and executed accordingly. But if it be by way of Reciprocal Agreement, then the Plaintiff may count, that in consideration he hath promised to the Defendant, the Defendant hath promised another thing to him, there he need not that the Declaration contain time or place for the consideration, or otherwise, that is performed and executed. Brownl. 137. Declaration. Reciprocal Promises.

But if in the Recitale, where it is executory, and averred, that it is executed, there if the Defendant plead Non-Assumpsit generally, and do not plead the special matter, he cannot take exceptions to that Count for the default aforesaid, where he pleads specially to that. Brownl. 2. 137.

Of Averment in an Action upon a Contract.

Of a Consideration.

If one promise to do something to mee, in consideration of something to be done by mee to him before it; if I will sue him for that hee is to do for mee, I must aver, that I have done that which was first to be done by mee, and till that be done, I may not sue upon that promise: As if I promise to another, in consideration that hee will forbear his debt till such a day, I will pay him; hee must shew hee did forbear, for if hee sue for it within the time, the Assumpsit and Action is gone, otherwise it is where one promise is the consideration of another promise, there nothing is to set forth, but the promise it self to maintain the Action. Curia. Mich. 4 Jac. B. R. Hill. 38 Eliz. B. R. Thorntons Case. Hobb. Rep. pl. 7, 27. 8 H. 8, 34. And if the thing to be done by mee, in consideration of another thing to be done by another, or to be done at a place, and within a time certain, I must set it forth to be so done: And if all, or part of the consideration be to stand to an award, or make a surrender; it is not sufficient to say, that hee was ready to do it, but hee must say hee hath done it. Mich. 9 Jac. B. R. Hosebodies Case. Bulstr. 1. part 109.

Declaration.

If A. in consideration that B. is indebted to C. a hundred pounds, promise, that if C. will forbear it till Michaelmas, that if B. pay it not, he will; in this case the cause of the first debt need not be shewed. Ingrams Case. B. R. Hobb. Rep. pl. 31, 32. Sir Moyle Finches Case. Trin. 9 Jac. B. R. Deanes Case. But where it is grounded upon an *Indebitatus* Assumpsit, where the debt it self is the consideration, there the ground of the first debt must be shewed: But for the forbearance is another consideration. Coo. 10. 77. Pasche. 14 Jac. B. R. Fuller and Thorns Case.

Indebitatus.

If I declare against an Executor, that the Testator was indebted to mee in ten pound, that the Executor, in consideration thereof, did promise to pay mee; I must shew how the debt did accrew. Mich. Jac. B. R. Ingrams Case. But if the first cause be not good, albeit not shewed, ought Defendant shew. Quære if it will not overthrow the Action.

Executor.

If an Executor be sued upon the Assumpsit of the Testator, the Plaintiff need not shew that hee hath Assets, but if hee have it not, the Defendant is to shew it. Cro. 9. 90. Hutton. 103. Hutton. 27. Cro. 2. 613. Brownl. 2. part. 138. Grob. 1. last publisht. 59. So in an Action upon an Account cast up, the Plaintiff need not shew how, or for what the money was due to the Plaintiff upon the Account. Hobb. Rep. pl. 16. And if I sue one for a debt, and another pray mee to forbear my Suit, and he will pay it; in my Suit upon this promise I need not shew the cause of debt I first sue for. Hobb. Rep. pl. 278.

Executor. Assets.

A. declares against B. that hee bought of B. a Horse for twenty shillings paid in hand, and for eleven pound more, to be paid at the death or marriage of A. for which hee should become bound with him in a writing Obligatory. B. in consideration hereof, promises to deliver the Horse on request. In this case if hee sue for the Horse, he must shew hee did offer to become bound with his surety, and in what summe in certain, and that he did offer to seal and deliver this Bond. Hobb. Rep. pl. 96, 79.

If one sue upon a promise to satisfie him for work done, he must shew in the Court what much he deserved for his work. Mich. 17 Jac. B. R. So if one sue for a thing sold, no price agreed upon, he must averre it to be worth so much.

Quantum meruit.

If a promise be to deliver twenty Sheep to mee, before the party shear his flock; if I sue upon it, I must set forth that his flock is shorn. Mich. 9 Jac. B. R. Cadels Case. If I sue for a promise of a childes part, or as much as he shall give with any childe, I must shew what he gave to another childe in certain. Trin. 17 Jac. B. R.

If

If a promise be to pay for every farthing that a man doth lose by such a thing done, he will pay him two pence; he that sueth, must shew how many farthings. Mich. 9 Jac. B. R. Coventries Case. But to declare, that where the Defendant was indebted to the Plaintiff ten pound, he promised to pay it; this is not good, without shewing for what, for it may be for a Rent, or a Lease, or an Obligation; in which cases this Action lies not, unlesse it be upon a Consideration of forbearance of such a debt, Adjudged.

If one for good cause promise to deliver me forty quarters of Wheat between Stirbridge Fair, and Christmas, if the Plaintiff like thereof at Stirbridge Fair; this is a good promise: But to maile the Action, the party to whom the promise is made, must shew his liking at Stirbridge Fair, and averre it in his Count; for it may not be made at another time, or place. Croo. 1. last publisht. 250. Sect. 3.

If part of a Consideration onely be good, as being material and valuable, the performance thereof must be averred: But where a consideration doth consist of two or three parts, and every one of them is valuable; there, of necessity hee must shew the performance of every part thereof. Croo. 1. last publisht. 759. Consideration of two parts.

Where there is a promise, for a promise there needs no averment of execution of what is executory in the promise. Croo. 1. last publisht. 543. Reciprocal Promises.

Where it is sufficient to say, the Defendant indebitatus fuit, without setting forth the penal cause of the Debt; and where not. Bulstr. 3. 206, 207.

And in all cases where a notice and request is necessary to be made, to give an Action, therein averment must be made of it in the declaration, when the Action is brought; and so for other like things, but for this thing. Croo. 1. last publisht. 73, 74. 85, 97. Notice. Request or Demand.

The Plaintiff declared, that the Defendant, in consideration that the Plaintiff would be bound for his Son, assumed to save him harmlesse from all such Obligations, as he at the request of his Son should enter into for him, and shewed that he was bound for him such a day, and to, &c. which Obligation hee was forced to satisfie, &c. And this was adjudged to be a good pleading, though hee did not lay any request or notice. Mich. 9 Jac. B. R. Somershall and Barnby.

If a Suit be going to tryal, and the Defendant, in consideration that the Plaintiff should not go to tryal, and give him a note of the charges; doth promise to pay him at his first coming to Gloucester; if in this case he sue upon this promise, hee must averre not onely the forbearance of the Suit, and the giving a note of the charges, but also the giving notice of his first coming to Gloucester. Hobb. Rep. pl. 63.

In Trin. 9 Jac. It was agreed, that where a man is in debt to another twenty pound, and he come to him, and desires him to forbear it till such a time, and that hee will pay it at that time: That in this case if he sue for the twenty pound after the day, he need not shew that it was become due: But if one be indebted to another upon a simple Contract, and sue for it upon a promise to pay it, the Plaintiff must shew how the first debt grew due, Bulstr. 1. part. 143. The Plaintiff set forth that hee had a Suit out in such a Term against the Defendant for fifty pound, and the Defendant knowing of it, prayed him to go no further in that Suit, and he would pay him the fifty pound upon request, that this was sufficient without shewing the cause of the debt. Hobb. pl. 147. 278. Insufficient Compute.

A. declared against B. that hee counter with the Defendant for divers summes

summey of money, and upon the Account the Defendant was found in arrear to him ten pounds, and in consideration thereof did promise to pay it at such a day; this was adjudged good, without shewing for what, for when money lent, then the last debt was. Hobb. Rep. pl. 16. [illegible]

Promise to pay a debt.

A declares, that the Defendant, in consideration that he was indebted to the Plaintiff ten pounds, for pasturing certain Beasts in the Plaintiffs grounds, for Wheat, and other Merchandizes by him had of the Plaintiff, did promise to pay, and it was held good. Hobb. Rep. 70. 7.

Executor.

But if one declare against an Executor, that whereas the Testator was indebted to the Plaintiff ten pound, and the Executor, in consideration thereof, did assume to pay it; that this is not good, without shewing the first cause of the Debt. M. 8 Ric. Ingram's Case.

A. in consideration that B. was indebted to C. ten pound, in consideration that B. would forbear it till Michaelmas, assumed, that if B. did not, he would pay it. M. 8 R. Ingram's Case. Book of Entries. fol. 2. And yet in these, and such like cases, the Defendant shall shew that there was no cause of the first debt, this may perhaps barre the Plaintiff.

Notice of Marriage.

If one for good cause promisseth to pay me money at the day of my Marriage, he need not shew in his Declaration that he gave notice of the Marriage before her married, but the Defendant is bound at his peril to take notice, and the general words, postea requisitus, will serve in the Count, without shewing the day. Croo. 1. 23. Adjudged.

Request pleaded.

Where money is to be paid upon Request, there must be a precise Request alleged. Croo. 2. 183.

Where I put my Horse to an Hostler to keep for six pence day and night, and sue for my money, I need not set forth a special Request, but licet sæpius Requisitus, will be well enough: So in all cases where the ground of the Action is for the debt, for there the Law intendeth the promise, and the Request is not issuable, nor parcel of the consideration: But otherwise, where the Action is founded upon a Collateral matter, and not upon the mere debt, for there the Request is issuable, and ought to be expressly alleged. Yelverton. 66, 67.

And where Request is to be set forth, there it is material and traverseable, and therefore the time and place thereof must be certainly set forth. Croo. 1. last publish. 179. And if this be omitted, the Declaration is not good. Bulstr. 3. 298. 326.

And so in all other cases where notice is to be given, or request, or demand to be made in case to produce and warrant the Action, the same must be set forth in the pleading, and be made and done accordingly. See chap. 12. Dowtit must be plained. See Croo. 2. 652. But in these cases it must be done sufficiently, by these general words, licet sæpius requisit, &c. Croo. 1. 280, 281. Croo. 1. part last publish. 35. 97. 455. Croo. 2. 235. Noys Rationes Edwards Rep. pl. 155. 167.

Where there is a duty in the Plaintiff before, there the not alleging of a Request will not hurt: But where the Request makes it a duty, there the Request must be precisely alleged. Godb. Rep. pl. 387.

If A. be bound to B. to pay ten pounds, when B. shall require it, there a Request must be alleged to be made. If a Contract be made, and no time set when to pay the money, and he sue for it before Request, he shall not recover damages besides the debt, but he shall where he doth make Request. Godb. pl. 454.

About breach of Trust.

For Declarations in all Actions about breach of trust. See Dyer. 186. Croo. 2. 262, 26.

About a Nuisance.

About a Nuisance: See 33 H. 6. 18. 2 H. 4. 21. Action, &c. 24. 18 R. 2. Action.

2. Action. &c. 36. Croo. 9. 53, 54. Croo. 8. 57. Croo. 9. 84. Croo. 1. last publisht. 180. 427. 751. Croo. 2. 673. Yelverton. 25. Winch. 16. Bendl. 160. Brownl. and Goldsb. 6. Leonard. pl. 236.

About a Deceit. See Croo. 1. last publisht. 44. Lib. Intr. 685. sect. 1. N. B. 98. F. 20 H. 6. 34.

About a Trover and Conversion. See Dyer. 121. Croo. 1. 348. Croo. 2. 50. 428. Croo. 1. last publisht. 78. 378. 480. 817. 818. 819. 864. 883. Hutton. Rep. 10. Croo. 2. 129. 638. 664. Yelverton. 43, 44. Bendl. 150. Noys Rep. 139. 145. Brownl. & Goldsb. 16, 17. Leonards Rep. 251. 335. Owens Rep. 27. 131. 142. 158.

About Baptiment. See Owens Rep. 153.

About Suits in Law. See Croo. 1. last publisht. 57. 7 H. 6. 45. Action 4. Croo. 1. 33. Croo. 1. last publisht. 53. 352. 877. 895. 913. Croo. 2. 241, 242. 351.

Against a Hundred. See Croo. 2. 26, 29. Croo. 2. 350. Hobb. 339.

About doing, not doing, mis-doing. See Croo. 1. last publisht. 57. 11 R. 2. Action 36. 43 Ed. 3. 33. 45 Ed. 3. 27. pl. 56. Action upon, &c. 50. Dyer. 312. 19 H. 6. 45. 20 H. 7. 2. Action upon, &c. 47. 30. Dyer. 366. Croo. 2. 255.

About a Contract or Assumpsit, take these Rules.

1. That if any substantiall variance be between the laying of the Action, and the evidence, it is dangerous, and therefore it is good policy in an Action brought upon a promise, to ground it upon one promise in the substance of it, but to lay the promise divers ways, and in different words in the Declaration, as not to be tied as he can make it, that if one of them he may hit the promise itself, and to the intent that upon the trial, the Plaintiff may rest and relye upon that way of laying, as that his witnesse are best able to prove. Mich. 24 Car. 2. B. R. Stiles Rep. 32. Hobb. pl. 214.

2. That he that declares upon an Assumpsit, must declare as the matter lay if upon proof it appear that he alledge more things promised, true, or lesse than is true, and the Jury find a part of the things promised, or only, or ways that he set forth he fails in his Action, the Plaintiff shall not have Judgement for this. Croo. 1. last publisht. 147. 881.

3. That where a promise is the very ground of the Action brought, there it must be pleaded, and set forth specially; but where it is but the Inducement to the bringing of the Action, there it need not to be specially set forth. Pasche. 23. Car. 1. B. R. Stiles Regist. 31. Yelverton. 17. 19. 40. 49. 50. 93. 128. See more Croo. 1. 183. 206. 267. 908. Croo. 1. 22. Croo. 2. 247. 289. 307. 404. 405. 548. 552. 603. 624. 632. 633. 664. Croo. 1. part last publisht. 149, 150. 193, 194. 249. 272. 502. 2. 1. 197. 477. 487. 807. 848, 849. 882. Croo. 2. 10. 225. Bendl. 237. Noys Rep. 19. 20. Bulstr. 1. part. 16. 124. The Action lies, that the Plaintiff, in consideration of ten pounds lent by him to the Defendant, that he assumed to pay the same to the Plaintiff. Brownl. 2. part. 40.

Where the Declaration is naught by mis-casting, or mis-counting, or not. See Croo. 1. 22. 12 Jac. Ball and Gird. Bendloes. 156. 187. Jenk. Century. 7. Case. 54. Spores Case. Croo. 2. 189. Jenk. Century. 8. Case. 13. Popham. 200. where otherwise. Godb. Rep. pl. 436. 484.

Where a man brings an Action of the Case for a thing that was originally a debt, the Plaintiff need not lay time or place of the Request: But where the Action is brought for a Collaterall thing, therein it is otherwise; there he must set down time and place for his Request. Winch. 2. Item it was agreed by the Judges, that in an Action upon the Case upon Assumpsit

About a Deceit.

About a Trover. Sect. 4.

About a Bayliment of goods.

About Suits in Law.

Against an Hundred.

About doing, not doing, mis-doing in other cases.

About a Contract or Assumpsit.

Look money.

Mis-casting.

Request.

sumpsit to pay money to the Plaintiff upon Request, that an actual Request must be alledged. Leonards Rep. pl. 389.

If the Action be grounded on a promise or consideration, that the party promising would assist him in the gathering of his Tithes, of Cheese, and Apples, and other Tithes, till such a time, hee would pay him twenty shillings, and hee sets forth that hee did assist him so long in the gathering of his Tithes of Cheese and Apples, and said nothing of other Tithes, yet it is good, for non-constat there are other Tithes. Mich. 7 Jac. B. R. Baker and Secker.

And for other Declarations on a Contract or Promise. See 3 H. 6. 36. Dyer. 352. 328. 19 H. 6. 49. 3 H. 6. 36. 11 H. 6. 18. Croo. 1. last publisht. 50. 59. Stiles Regist. 32. 16 H. 6. Action, &c. 44. 11 H. 6. 18. Action. 7. Hobb. pl. 120, 114.

If one, for good cause, promise to pay, and to deliver to mee twenty Quarters of Corn the next Seed-time, or the next Harvest; if I do not sue till after Seed-time, or after Harvest, I need not in my Count set forth when the Seed-time, or Harvest was. Godb. Rep. pl. 445.

Where the promise is, in consideration of eleven shillings I. S. did promise to mee, to carry certain goods of mine aboard such a Ship, if I deliver them to him; it will be safe for mee in my count to shew the time and place of the delivery of them. Godb. Rep. 485.

If a Physician promise to do his indeavour to cure such a disease, hee must set down some place of doing his indeavour. Godb. Rep. pl. 490.

If one promise upon request to deliver up an Obligation; it seems this must be laid specially with time and place, and licit sæpius requisit, is not sufficient, for here it is a Collateral matter: But where it is upon a Debt, or Contract, and not severed from the duty, there licit sæpius requisitus is good. Huttons Rep. 73. 106.

Where in an Action upon the Case, upon Assumpsit two Considerations or more are laid in the Declaration, but they are not Collateral, but pursuant. As A. is indebted to B. a hundred pound, and A. promises to B. that in consideration hee oweth him a hundred pound, and in consideration that B. shall give to A. two shillings, that hee will pay to him the said hundred pound at such a day. If B. bring an Action upon the Case, upon this Assumpsit, and declare upon these two promises, although the consideration of two shillings be not performed, yet the Action doth still lye: But if they be Collateral Considerations, which are not pursuant; as if I, in consideration that you are of my Counsel, and shall ride with mee to York, promise to give to you twenty pound; in this Case all the Considerations ought to be proved, otherwise this Action will not be maintainable. Leonards Rep. 405.

In the setting forth of a Consideration, where there is a reciprocal promise laid, there need not in the Declaration to be laid the payment of the money, nor yet the time when the same is to be paid, for by the agreement the Law gives the party remedy to recover the mony agreed upon: But if the promise be laid thus, That if you do pay so much to mee, then I will deliver to you such a horse; here hee ought to lay a special payment of the mony, or no Action will lye, for not delivery of the horse. Bulstr. 2. 334.

Upon a promise to save a man harmlesse, a special Request must be alledged, and licit sæpius requisit is not sufficient. B. Bulstr. 2. 229.

If one sell two weighs of Barley, and the buyer assume to pay for them, as the seller should have of any other, abating a penny onely in every Bushel; in this case hee is in his Action brought, to shew what he sold

Request. Where the Consideration of the promise is to be well executed and performed, or not. Sect. 5.

sold it to another, and that hee gave notice thereof before he brought his Action. Croo. 2. 442.

If in the Condition, or consideration of a promise, a man be to do divers executory things, and hee shewe that hee hath done some of them, and that he was always ready to do the rest, this is not good; for being futurely to be performed, they must be precisely alledged to be performed, otherwise no Action will lye upon it. Croo. 2. 583. Sect. 5.

If one promise me, that if I will travel with him to London, to help him to search for the Will of J. S. that hee will pay me four pound for my pains: if I sue for the four pound, I must shew that I did travel with him to London, and helped him to search for the Will, &c. Croo. 2. 610.

If one, in consideration I will lend him ten pounds, and accept such a Bond of, &c. and a Letter of Attorney to sue it, and that I will release to him all Actions and Demands, doth assume, that if I cannot receive the mony of the Bond, that hee will pay it mee; now if I will sue upon this, I must set forth all this to be executed. Croo. 2. 623.

If there be two Causes of Considerations of the Promise alledged in the Declaration to be executed, and either of them is sufficient, and one of them is well alledged, but the other is ill alledged, the whole Declaration is naught. Croo. 2. 164.

As the Defendant is bound by his promise, so also is the Plaintiff bound to shew the precise Consideration agreed on, or of his part to be performed also. Yelverton. 177.

Where the Defendants Testator was indebted to the Plaintiff fifty and thirty pounds, and in consideration that hee would forbear the Defendant till hee had got an execution on such a Judgement, &c. he promised to pay the three and thirty pound upon request; here it must be set forth by the plaintiff that he had execution upon the Judgement, but he need not shew how the first debt did arise, nor that the Executor had Assets. Croo. 2. 594.

If there be a talk between me and another about the buying of such a Close of his, and in consideration of ten shillings paid by mee, and twenty pound to be paid the twentieth of December, in such a place, and in consideration that I will at such a day and place bring a sufficient man to be bound to him, to pay the twenty pounds to come, he assumes I shall injoy the Close, &c. In this I must shew I brought a man, and that he was sufficient, and that they two were bound, or offered to be bound. Yelverton. 49, 50.

Where there is a reciprocal promise in the case, there need not be any pursuit or performance of the Consideration. Bendl. 138.

The Defendant did promise that hee would make such a conveyance of Land, and pleades that he did make it, but did not enter; this is good, and shall be intended upon the Land. March. Rep. 22.

An Action upon the Case upon an indebitatus existit of an Assumpsit cannot be well brought, because the being now he became indebted, for Merchandizes, or for ready money. Adjudged. Noys Rep. 74. Quere if it be upon a promise for forbearance, or the like. Brownl. and Goldsb. 12. *Indebitatus existit.*

Where Non-Assumpsit is pleaded to a Consideration Executory, the Plaintiff needs only to prove the promise; for where the Consideration is Executory, the Defendant may take time as well for not performing the Consideration Executory, as upon the promise. Brownl. and Goldsb. 8. And where a man assumes to pay money, or do any thing upon condition, the

the Defendant may take issue upon the condition, and needs not plead Non Assumpsit, but if he pleads Non Assumpsit, then he cancelleth the performance of the condition. Brownl. and Goldsb. 19, 81.

Where, in an Action upon the Case, the Defendant was indebted to the Plaintiff ten pound, without expressing the cause how it grew due; the Defendant, in consideration that the Plaintiff, at the request of the Defendant, had then, and there given day to the Defendant till a day to come, to pay the money, the Defendant promised to pay it; in this Case the Action is maintainable, without shewing the cause for which the debt was. Brownl. and Goldsb. 14.

In Trover and Conversion, it ought to be averred to be in a certain place, and so in Submission and Arbitrement, if they are contained in the Declaration, it need not to expresse any time, or place certain; but the Defendant pleads, that the Arbitrators made no award, or that the parties have not submitted to the award; there the Plaintiff may reply, that the Arbitrement or submission was made at such a place. Brownl. 2. part. 137. See more for this in Croo. 2. 596.

Where the breach of performance of a promise is well laid in pleading or not.

If one assume, and declare, that hee should enjoy such Lands according to his Lease; without let or incumbrance of any person, and shews that it was extended for debt due to the King, by processe out of the Exchequer, and so incumbred, &c. this is not well assigned, but he must shew for whose debt, where, and by whom it was due, and so that it was a lawful incumbrance. Croo. 2. 425.

Sect. 6.

If one promise to make an assurance of such as shall be reasonably devised; and the party to whom it was made devise a Feoffment, with Covenants to save harmlesse from incumbrances, and to make a further assurance, and hee refuseth to seal this; this is no breach, for he is not bound to seal such an one. Croo. 2. 571.

If one count for non-payment of money, at the Plaintiffs next coming into Somerset, and that such a day he came there, and that the Defendant, though often requested, hath not paid, &c. This, it seems, is good, without shewing that he gave notice when he came into the County. Brownl. and Goldsb. 10, 11.

The Promise was this, Marry my Niece, and when I come from London; I will give you a hundred pounds, and the Action was laid thus, in consideration that he would marry A. promised to pay the Plaintiff a hundred pound after he returned from London, when he was thereunto requested: and for these words, when he was thereunto requested, the Action was maintainable. Goldsb. and Brownl. 14.

If one, in consideration of marriage, promise to do three things, and he declares only for one, and saith nothing of the other two things; this is not good. Godb. Rep. p. 202.

If one, in consideration of forty pound given him by another, do assume and promise to take his Son Apprentice for seven years, and to teach him his Trade, and to finde him, during that time, meat, drink, and apparel, &c. and he sues for not finding him meat, drink, &c. in this case he must shew that hee did take him to be his Apprentice, or hee is not bound to it. Dalle. 3. part. 221. Croo. 2. 576.

About damages.

See for this Owens Rep. 34. One, in consideration of five shillings, promises to do such an Act; or if one give ten pound to pay a hundred pound, if hee marry again; the damages are given according to the consideration, and if the Jury be excessive, relief may be had in Chancery. Owens Rep. 34.

If one bring an Action upon the Case for two promises, the one for a Horse,

horse, the other for mony lent, and at a tryal the Jury give the damages entire; this is good. Bulstr. 3. 258.

To an Assumpsit, may be pleaded Non-Assumpsit, or a Concord. Lib. Intr. 6.6. sect. 6. And hee may plead Non-Assumpsit, albeit it be without consideration. Pasche. 26 Eliz. B.R. But if the former were upon an entire summe, upon two Assumpsits, then no barre. Trin. 14 Jac. B. R. See more chap. 15. throughout. About the Plea in Barre.

A good barre, that hee promised upon condition not performed. Lib. Intr. 5. D. sect. 1. Non emisset, the thing of him a good barre. Lib. Intr. 6. B. sect. 5.

That the Plaintiff discharged him of the bargain, a good barre. Lib. Intr. 685. C.

If one promise to B. to convey Land to such a one as hee shall name, and after, hee doth by agreement between them, convey it to B. himself; this is a good barre to the Action. Mich. 13 Jac. Co. B.

No Traverse may be of a Consideration executed alone; but a Consideration executory may be traversed alone. Hobb. Rep. pl. 128. Trin. 14 Jac. B. R. Croo. 1. last publisht. 201. 250. 373. Traverse.

In Trover and Conversion, the Conversion is traversable; and therefore time and place of Conversion must be set down in pleading. Croo. 1. last publisht. 97. 555. 201.

In case of a Warranty on a Contract, the Cause and Warranty both must be traversed, whether it were deceitful, or not; for the Warranty is parcel of the Contract. 19 H. 6. 49. Action, &c. 10.

It is a good Plea to any such Action, if it set forth such a thing as by Law is a discharge of an Action. Yelverton. 22.

Where a Justification in Trover ariseth upon sale, there needs no Traverse of any more but the place alledged, and not the whole County; but if it be transitory; as for taking of goods, and the like, there the whole County must be traversed. Brownl. and Goldsb. 17.

For the pleading in all Cases and Actions. Croo. 1. last publisht. 551. 569.

About a Nusance. See Croo. 1. last publisht. 285. Yelverton. 225. 210. 215. About a Nusance.

About a Deceit. 16 H. 6. Action upon, &c. 44. 3 H. 7. 14. Croo. 1. last publisht. 247. About a Deceit.

About a Trover. See Dyer. 121. 146. 174. 262. 366. Croo. 1. last publisht. 351. 352. 378. 433. 434. 435. 480. 486. 505. 540. 554. 568. 693. 763. 870. 901. Croo. 2. 68. 69. 256. 319. Century. 8. Case. 45. 21 H. 6. 12. 30 H. 6. 7. 3 H. 7. 7. 13 H. 7. 21. 5 Ed. 4. 136. Yelverton. 45. 67. 198. Noys Rep. 41. Brownl. and Goldsb. 5. About a Trover.

About Bailment of goods. Broo. sect. 82. 198. 405. Yelverton. 22. Leonards Rep. pl. 267. About a Bailment of goods.

About Suits in Law. See Croo. 1. last publisht. 895. 913. 914. About Suits in Law.

About Doing, Not-doing, and Mis-doing in other cases. See Broo. sect. 382. About Feasance, Non-feasance and Mis-feasance in other Cases.

For disturbing a man in his Franchize. 38 H. 6. 19. Action, &c. 15.

For claiming, and lying in wait for one as his Villain. 2 Ed. 4. 5. Action upon, &c. 16.

For burning a House. See 13 H. 6. Doble. 31. Smith for pricking a horse. Action, &c. 35.

For not repairing. Action upon, &c. 36. Croo. 1. last publisht. 285.

Not finding a Chaplain. 22 H. 6. 46. Action upon, &c. 12.

About a Contract or Assumpsit. See Croo. 1. last publisht. 179. 201. About a Contract or Assumpsit.

Croo. 2. 234. 444. 587. 620. 690. 544. 359. upon an Indebitatus. Croo. 1. last publisht. 242. Yelverton. 114. 117. March. Rep. 73. 100. Hobb. 148. Noys Rep. 82. Popham. 207.

About buying and selling. 42. Ass. pl. 8. Action, &c. 42. 7 H. 8. 15. Action upon, &c. 27. 9 H. 6. 53. Bulstr. 1. part. 124. 155. See more Croo. 1. last publisht. 407. 250. 470. Hobb. 253.

For a Trover. About a Trover. See Croo. 1. last publisht. 883. See more chap. 15. throughout.

About the Tryal. For the Tryal in these Actions, and where it must be. See Croo. 1. last publisht. 260. 242. 465, 466. 510. 625. 760. 761. 781. 547. Croo. 2. 492. Yelverton. 105. Noys Rep. 139. Brownl. and Goldsb. 7.

About the Verdict. For the Verdict in these Cases. See Croo. 1. last publisht. Dyer. 113. Croo. 1. last publisht. 392. 537. 660. 882. 884. Yelverton. 45. 77. Goldsb. Rep. pl. 387. Stiles. Rep. 335. Noys Rep. 82. See more Croo. 1. 39. Croo. 1. part last publisht. 79, 80. 107. 114. 171.

About the Judgement. For the Judgement in these Actions. See Coo. 9. 93. N. B. of Entries. 2. C. sect. 3. 1. B. sect. 1. Croo. 1. last publisht. 465. Croo. 2. 442. 247. See more Dyer. 372. Croo. 1. 355. 356. Croo. 1. last publisht. 146.

About errors in the proceeding, and what may be amended or not. For Errors in the proceeding; and what is amendable, or not. See Croo. 1. last publisht. 258. 260. 262. 276. 311. 489. 660. 781. 904. 74. 79. 91. 92. 107. 116. 124. 179, 180, 181. 194. 568. Croo. 2. 294, 295. 443. 493. 596. 247. 359. 397. Dyer. 98. 163. Croo. 1. 21, 22. 38. 64, 65. 117, 118. 159. 207. 236. 278. Bendl. 157. Noys Rep. 61. Brownl. and Goldsb. 15. Bulstr. 3. 161. See chap. 15. throughout.

CHAP. XV.

Some choice Cases for the illustration, and confirmation of all that is before said about Contracts and Assumpsits.

Sect. 1.

Case 1.

The Plaintiff having in such a Ground, Wheat, and Rye eared, and almost ready to be cut, sold all his blades of Corn on this Ground (the Tithes excepted) for sixteen pound to be paid at such a day to come; this was adjudged a good bargain. Coo. 4. Slades Case. 92. And in this Case it was agreed,

Assumpsit implied. 1. That upon every Executory Contract, there is an Assumpsit implied, and therefore upon this the party to whom it is made, may upon it have an Action of Debt, or Action upon the Case at his election; as if I sell goods to another, and agree to deliver it to another at a day to come, and the other, in consideration of this, agree to pay me ten pound for it; in this Case each of us may have either of these Actions against the other upon this Contract, and recover the entire debt and damages, if there be cause: And the recovery in one of these, will be a barre in another Action for the same Cause. See Cases. 4. 41.

Reciprocal Actions.

Assumpsit to pay mony at divers daies. 2. That if one assume to pay mony at divers daies, or to deliver me so much Corn every year during my life; in this Case I may not have an Action of Debt, till all the daies be incurred, but I may have an Action of

of the Case upon every default. See after Cases, 19. 25. 28. and others. Case. 45.

3. That in many Cases, a man for one cause may have his choice of one of two Actions; as against a Sheriff for the escape of one in execution upon a Statute. Against the Lessor that shall out his Lessee for years of Land, his Executors, or Administrators. Against him that shall distrain his Horse riding upon the High-way. Against him that shall distrain mee, or my Tenants, to come to his Leete where I owe no service. Choice of Action.

4. If one deliver a Horse, or other thing to keep, and the party suffer it to be stoln, killed, or lost, the party bannisted may either have this Action or Detinue for it at his election. See Case 2, 3. Bailment of goods.

Case 2.

Coo. 9. 86. Finchons Case. It was agreed amongst other things,

1. Touching an Executory Contract, as in the first Resolution of the last Case.

2. That an Action of the Case will lye against the Executors upon the Assumpsit of the Testator, expressed or implied; and no wager of Law shall be admitted in this Case. And yet see Case 73. whereby it appears the Law was taken to be otherwise in former times. But agreed by all the Judges. 20 Jac. See the Case in this Section afterwards. Case 225. Against Executors.

3. That an Action personal (that is) founded upon a wrong, as upon an escape against a Gaoler, and the like, is so annexed to the persons of the parties, that it perisheth with them: But it is otherwise in an Action of the Case grounded upon an Assumpsit for Debt, and the like; for an Assumpsit without Especialty, is no more personal than a Covenant by Especialty, and therefore dyeth not with the person. Action personal dieth with the person.

4. That the Plaintiff need not to averre there are Assets for Legacies; this is presumed, if not, the other party must plead in barre, that there are not, See Case 3. afterwards. See Plow. 182. Accord. Norwood and Read's Case; where A. declared, that B. in consideration of forty shillings to him paid by the Plaintiff, assumed to deliver him fifty Quarters of Corn at such a place, at two daies, for three and thirty pound six shillings eight pence, to be paid by the Plaintiff presently, after the delivery of the Corn (to wit) at each day sixteen pound thirteen shillings four pence, and shewed that hee was ready to receive it, and to pay his mony at the dayes, but that the said B. did not deliver it, or any part of it at the day; not that the Defendant, being his Executor, albeit hee had Assets, &c. And the Defendant demurred to this declaration: But it was agreed and adjudged, that the declaration was good, and the Executors chargeable with the promise. See after Case 13. Averment of Assets. Consideration; mony. Promise to deliver Corn. Executors.

Case 3.

William Bone's Case. Coo. 9. 93. The Executrix assumed to the Creditor, that if hee would not sue, &c. she would pay him such a day, or assure him a Term of years, shee marries, hee sues upon the Case; but did not count that shee had Assets at the time of the Assumpsit; in this Case it was agreed to be good, and yet if shee had not Assets, that it is but Nudum pactum. But it shall be intended prima facie, that shee hath Assets; and that the Assumpsit is good, although by it shee will be charged in her own right. As if I, in consideration you will forbear B. Executors chargeable. *Nudum pactum*. Consideration valuable.

assume to pay you the debt; for though I cannot be benefited by it, yet you may be damaged: But in this case shee may if shee can give in evidence that shee hath not Assets. See Case 2. before.

Case 4.

Assumpsit implied.

It was agreed Mich. 4 Jac. B. R. in the Case of Sir Moyle Finch and Richardson,

1. That if a Testator, for a due debt, assume to pay the money, that if hee have Assets, hee shall pay it: But if hee promise to do some Collateral Act, as to enlarge a man out of prison, or the like, and not for debt; there it seems hee is not chargeable. And in the first Case, if the Executor assume upon a forbearance to pay the debt, that in this Case the Action may lye against him, and that this is a good consideration. See after Case 42. And in that Case it was held by Fenner, That if an Executor be chargeable in conscience onely, and not in Law, and hee promise to pay it; that by this he is become chargeable in Law.

Consideration.

Pledge.

2. Mich. 7 Jac. in Levets Case. B. R. It was agreed, that if goods be delivered to mee in pledge, and another man shall desire them, and assume to mee, that if I will deliver them to him, that hee will pay the debt to mee; that this is a good consideration. See Case 363.

Consideration valuable.

Forbearance.

3. Pasche. 1 Jac. Co. B. in Austin and Woolmots Case. It was agreed, that if one be indebted to mee Corn, or Money, and say to mee, forbear till such a day, and I will pay you; this is a good consideration: But if hee say, forbear onely, and say not, till a time certain, it is otherwise.

Consideration past.

4. Farmer and Heild. Pasche. 9 Jac. Co. B. It was agreed, that if one buy a Horse of mee for money, and another after the bargain say to mee, if hee pay you not the money, I will; no Action will lye for this: But if the first bargain I have were at his Instance and Inducement, there it may be otherwise. See after Cases. 17. 30. 34. 56, 57. 59. 82. 85. 100. 139. 145. 170. 182. 189. 387. 394.

Case 5.

Pleading.

Action upon the Case was brought in London by A. B. quod cum ipse possessionat fuit, of certain Wine, and other stuff (in certain) in such a ship to the value of, &c. not shewing the place certain where he was possessed, and yet good; and shewed that the Defendant such a day, year, and place, in London, assumed for ten pound, that if the Ship and Goods came not safe to London, and were not landed there, that hee would pay the Plaintiff a hundred pound, and after that the Ship was robbed in the Sea, &c. And the bargain was made beyond Sea, and agreed that the Action notwithstanding was well brought. Broo. sect. 232.

Assumpsit not local.

Case 6.

Indebitatus Assumpsit.

In the Case of Holme and Lucas. Croo. 1. 3. in Assumpsit, The Case was, the Writ and Declaration were, quod cum indebitatus fuit to the Plaintiff in fifteen pound, in consideration thereof hee assumed, and did not shew for what cause, for Merchandizes sold, money lent, or other causes which lye in Contract: For if it were by Judgement, Especialty, or the like, which lyes not in Contract, an Assumpsit in consideration thereof will not lye, because damages recovered in an Assumpsit

Pleading.

cannot

cannot be a barre to a debt upon a Record, or Especialty; and it seemed to be agreed, that upon a Non-Assumpsit, being found for the Plaintiff, that it is good enough: But had the Defendant demurred to the Declaration, it had been naught. Presidents were to be charged, *Et Curia ad visare vult.* See afterwards, Cases 11. 31. 65. 145. 223. 229. 233. 248. 275. 299. 309. 353. Demurrer.

Case 7.

In the Case of Flight and Crasden. Croo. 1. 5. There was an Assumpsit by him, to whom the Obligation of threescore pound was made, on condition to pay thirty pound the ninth of May, the same day: That in consideration the Plaintiff would pay the Defendant this thirty pound, the same day, that hee would deliver him up his bond to be cancelled; and therein it was adjudged a good consideration: As if a man promise, that if hee will pay his money in the morning of the day, hee will give him five pound; this is a good consideration: And if I have a Judgement for five pound, and promise the Defendant for four pound paid mee in hand, to acknowledge satisfaction of the Judgement by a day; this is binding, if the four pound be paid. Croo. 1. last publisht. 429. Reynold and Pinhow. M. 37. 38 Eliz. B. R. Assumpsit. Consideration good, to pay a debt due before. Promise to deliver up the bond.

Case 8.

In an Assumpsit between Farrer and English. M. 1 Car. 1. B. R. the Count was, in consideration that the Plaintiff would accept twelve pounds ten shillings of the Defendant, in discharge of all Accounts between the Plaintiff, and this Defendants Brother, and seal an Acquittance to the use of his Brother, as should be required, the Defendant promised his Brother should seal the like to him: And in fact sayes, hee did accept the twelve pound ten shillings, &c. and sealed, &c. and that the Defendant hath not procured an Acquittance from his Brother. Found for the Plaintiff; and it was moved, that there is no sufficient consideration why the Defendant should give this twelve pound ten shillings; But not allowed, hee paying, and the other receiving, it is enough. Consideration valuable. To accept a summe of money in discharge of all accounts, &c. Promise to give a Release. Executory.

2. Because hee alledged hee gave a general Acquittance, but shewes none to the Court to judge the sufficiency.

3. Because it is said to be delivered to a stranger to the use of the Defendants Brother, who would, or could not deliver it to the party himself. Crook, for the two last held the Declaration naught, but the other Justices contrary; for they held it good after the Plea, wherein hee denies the Promise, but not the Performance: But if hee had demurred because hee shewed not the Acquittance, otherwise by Hubbard. Judgement for the Plaintiff. Croo. 1. 13. Pleading.

Case 9.

Morris and Fletcher. Mich. 2 Car. 1. Co. B. The Plaintiff did count, That in consideration hee would marry the Defendants Daughter, the Defendant would pay such a summe of money, and pay for the Wedding Apparel, and that hee married her, and provided for her two Gowns, and two Petticoats, the Defendant licet sæpius, &c. did demurre to the Declaration, for that it was said, hee ought to pay but for one Gown, and one Petticoat; and for other matters in the pleading, but adjudged Marriage. How a promise shall be taken and performed

judged for the Plaintiff, and held, that one Gown, and one Petticoat was not sufficient. Croo. 1. 38. See after Cases 14. 17. 23, 24. 36, 37, 38. 37. 92. 115. 117. 129. 141. 197. 203. 211. 215. 231. 294. 389.

Case 9.

Consideration, the making and delivery of a garment by a Taylor.

Rolt and Sharp in the Exchequer Chamber. Trin. 3. Car. 1. Error upon a Judgement given in an Assumpsit. The Plaintiff declared, that hee made for A. S. a Gown, &c. which hee kept for his mony; and the Defendant, in consideration hee would deliver the Gown, &c. promised that hee would pay as much as it was worth, hee delivered it to A. S. and saith, it was worth, &c. And it was adjudged for the Plaintiff, and the Judgement affirmed.

Executory.

1. Albeit shee promised to pay, and said not to whom.

Promise of pay. Certainty.

2. Albeit the consideration had nothing of benefit in it, to her that made the promise, by the delivery of the things.

3. Albeit hee doth not alledge that hee delivered them to A. S. to her own proper use.

4. Albeit it were to pay tant. quant. &c. for this is the usual course. Croo. 1. 55.

Case 10.

Consideration, the forbearance of a Suit for a Trespasse.

Assumpsit. In consideration that the Defendants Dogge had killed the Plaintiffs Sheep, and hee would forbear to sue him, hee would recompence him the first of May, &c. and that after hee did request him to pay, &c. who refused. Defendant pleads. 21 Jac. chap. 16. the Action being grounded on a promise made 11 years before, Plaintiff demurred: And after Argument it was resolved, that the Action lyeth, and is brought within the time, for although the promise was. 18 Jac. yet no cause of Action, till request of recompence, for the duty ariseth upon the request, and Non-payment after is the cause of Action. As an Assumpsit to pay if hee marry A. S. or when hee returns, &c. upon request; in this Case no Action can arise till the Marriage, or return, &c. and request made. Judgement was given for the Plaintiff. Croo. 1. 99. See after Cases 34. 40. 43. 52. 60. 192. 69. 38. 78. 113. 140. 144. 159. 168. 186. 194. 220. 249, 250. 266. 261. 278. 299. 321, 322. 364. 375.

Limitation of time for an Action.

Request necessary.

Case 11.

Indebitatus Assumpsit.

Homes and Savill. Trin. 4 Car. 1. Co. B. The Plaintiff declared, That there being divers reckonings between them, Insimul computaverunt, and thereupon the Defendant was found in debt to the Plaintiff, which hee promised to pay, and licet sæpius, &c. hee had not paid it, &c. After Non-Assumpsit, verdict for the Plaintiff, and motion to arrest the Judgement, for that the particular Causes were not set down. But it was held by the whole Court, that forasmuch as the Account may be for divers Causes, and many things may be included therein, which in pede compoti is reduced to a summe certain, shewing that there is a ground for the Action, without shewing the particulars for what they accounted. And Judgement was given for the Plaintiff. Croo. 1. 82. See Case 6. before.

Pleading.

Cases

Case 12.

Mustard and Hopper. Mich. 31, 32 Eliz. B.R. Assumpsit. The Plaintiff declared, that in consideration the Defendant should enjoy such goods, &c. hee would pay the party five and twenty pound, upon Non-Assumpsit, the Jury finde, that hee promised to pay, if hee injoy such goods, &c. And it was adjudged for the Defendant, for the Plaintiff declares of an absolute, and the Jury finde a Conditional Promise. Croo. 1. last publisht. 149.

Verdict naught

Case 13.

A. was indebted to B. a Merchant, upon an account, and died, and the Wife of A. doth administer her Husbands goods, and the Plaintiff B. declares, that hee intended to sue her for this debt, and shee requested him, that two friends might survey the Account between her Husband and the Plaintiff, to which hee agreed, and that they did survey it, and it appeared to them the debt was due, and that her deceased Husband had acknowledged it: And that shee, dum sola fuit, in consideration of the premises, did assume to pay it at a day certain; in this Case it was adjudged after a Verdict, and in a Writ of Error, that this was a good consideration to charge the Wife de bonis propriis; as it is, in case shee had promised, in consideration shee had Assets, or that the Plaintiff would forbear to sue her, or the like; so that the debt of her Husband is by this turned into her own debt. Pasche. 3 Car. 1 Co. B. Marsh against Culpepper and his Wife, in Hetleys Rep. 1. 8, 11. See Coo. 9. 94. and 6. 41. See before Case 2, 3.

Upon an Assumpsit.

Certainty enough.

Action against Husband and Wife.

Case 14.

Cule against the Executors of Thorne. Pasche. 6 Car. 1. B.R. Assumpsit, that hee would give with his Daughter Sarah, as much as hee gave any of his Daughters, if the Plaintiff married her, as hee did. In facto hee saith, hee gave a hundred pound with his other Daughter A. and a bond of fifty pound to be paid three months after his death, if A. or any of her Issue were alive, and that A. is alive, That the Testator paid the Plaintiff forty pound, and for the residue, and the like bond, brings the Action against Executors Non-Assumpsit, found for the Plaintiff, motion to arrest; it was adjudged for the Defendant. For 1. The promise extends to mony onely, and not to the bond. 2. If it extend to the bond, it must be averred, that Sarah, or some of her Issue be alive, and not that Alice is alive as was declared. Croo. 1. 134. See before Case 2.

Against executors, for more for a marriage portion.

How taken.

Certainty.

Averment.

Case 15.

A. delivered to B. the eighth of May, a hundred French Crowns, and the ninth of May as many more, and B. in consideration thereof, did then and there assume to deliver six shillings in silver for every Crown, upon a Non-Assumpsit, Verdict was given for the Plaintiff, and entire damages; and the Judgement was reversed, for the Assumpsit goeth only to that which was last delivered. Mich. 42, 43 Eliz. Pilsworths and Seals Case. See Case 37.

Consideration.

Delivery of mony.

Promise to redeliver.

How taken.

Entire damages.

Case

Case 16.

Promise mony, paid, and to be paid.
Deceit.
Pleading.
Concord.
Arbitrement.
Debt.
Warranty after the Contract.
Consideration executory.
Condition.

Andrews brought an Action of the Case, and declared, that the Defendant for twenty pound, whereof a mopety was paid, and the rest a time set for it by the Contract, assumed to deliver four hundred pound of Wax to the Plaintiff such a day, and hee at the day delivered to him three hundred seventy three pound of bad Wax, warranting it to be good, and merchantable, by which hee was damnified, &c. The Defendant pleaded an Accord made after, for twenty pound of Wax, as well for the insufficiency, as for the residue not paid, and that hee had paid it, and the other accepted of it, Judgement, &c. And the Plaintiff did demurre, because the Deceit was not answered: But the barre was held good: And that a Concord executed, is a good Plea in all Actions where nothing but damages are to be recovered: And the Arbitrement is a good Plea before it be executed, for debt will lye upon Arbitrement. And it was held, that the Deceit above was not material to be answered; for the Warranty of the sufficiency was after the Contract, so that there was no confidence in the Case. It was also held, that the declaration was not good, because the same did not set forth the second day not to be come, and therefore it shall be intended to be past, and that the Consideration is not executed, for the Contract was, for twenty pound, which is a condition. Andrews Case. Dyer. 75. See Case 18. after.

Case 17.

Consideration, the bailing of a prisoner.
Promise to save harmlesse.
Consideration past, good.
Marriage.

The Servant of A. was arrested in London for Trespasse, and two of the Masters Friends bailed him, after A. promised to them, for their friendship to save them harmlesse from damages and costs, &c. If they be afterwards charged; this Action of the Case lyeth not, for it is not a Consideration, for the bailing was of their own heads, and is executed before the Assumpsit: But if the Master had requested this before, and the Assumpsit had been after ut supra, perhaps it may be otherwise. As in consideration that you have married my Daughter at my request, I will give, &c. this is a good consideration, because the marriage doth follow my request. As Land may be given in frank marriage after the marriage. Hunt and Bate. Dyer. 272. See Godb. Rep. 33. Accord. See Case 34.

Case 18.

Assumpsit of the wife *dum sola fuit.*
Consideration, the soliciting of business.
Promise to pay mony.
Accord.

Onelie, brought an Action of the Case against the Countée of Kent, and his Wife, and declared upon an Assumpsit, dum sola fuit, in consideration that hee had imployed great Travel, and had spent one thousand five hundred pound circa negotia & sectas of the Wife, that hee would repay the one thousand five hundred pound and two hundred pound more. The Defendant by protestation, that the Plaintiff had not laid out one thousand five hundred pound, and that the Wife did not promise the two hundred pound more for Plea, said, that the Plaintiff did lay out ten pound about, &c, and no more; and that the Heir, in recompence of part of the Dower of the Wife, agreed to make a Lease to the Wife for years, to begin after her death, which the Wife caused to be made to the Plaintiff to her use, and after Marriage the Countée agrée, that in satisfaction of the Plaintiff of the said Assumpsit for expences and travel, the Plaintiff should retain the Leases, and this at the request of the Plaintiff, upon

upon this the Plaintiff did demurre. Mowlton and Manwood, that the Consideration was against Law, for that it did import maintenance. Also the Plaintiff ought to have shewed what business, &c. Dyer, held it no maintenance to help a Widdow in her business, but matter of charity. And that it was no satisfaction to retain a Lease, which was his own before, and of which no use could be limited. Also it was no advantage till the death of the wife, where amends upon a Concord ought to be executed in the life of the Trespasser, and before Action brought, and not at a day to come, which the party may refuse. Contra in Arbitrement: And yet an Arbitrement ought to be in appearance commodious to both parties. Manwood agreed, that it was no satisfaction, Dyer. 353. See Case 16. before, and after Cases 61, 62. 64. 84. 110. 195. 206. 207. 256. 277. 292. 353.

Consideration against Law. Maintenance. Pleading. Amends. Arbitrement.

Case 19.

Redman did assume to deliver to Peck twenty Quarters of Barley at the Feast of St. Michaelmas, every year during their lives, and that the Plaintiff should pay for every Quarter four shillings; Peck brought an Action of the Case for a failer three years, and upon a Non-Assumpsit, it was found for the Plaintiff. And three Justices contra three, whether damages shall be assest for the entire damages to come; which was incertain, or for that which was past onely. Dyer. 113. See Coo. 4. in Slades Case. Case 1. before. See case 15.

Promise to deliver Corn at divers daies. Damages, how to be assest.

Case 20.

An Action of the Case was, supposing an Assumpsit to re-assure Land, was brought by the Lord Stafford against Alderman Howard. The Jury found that the Defendant did not assume in manner, &c. Notwithstanding, if H. and W. witnesses, have sworn true, as wee judge they have, wee say that hee hath assumed; and if the Court so think, then wee assesse damages. And by Dyer and Aylofe, it was held clear, that the Verdict was for the Defendant. Dyer. 372.

Verdict imperfect.

Case 21.

Alfords case. The Servant made a Bill testifying the buying of Wax to be to the use of his Master, and this without Seal, by which hee bound himself to pay the debt; debt lyeth not against the Servant, but Action of the Case, for it is the debt of the Master, the Assumpsit of the Servant. Dyer. 230.

Master and Servant. Assumpsit by the Servant.

Case 22.

In the Case of Thursby and Warren. Pasche. 5 Car. 1. B.R. It was resolved, That an Attorney may be a Sollicitor for his Client in other Courts, as well as in his own Court, and allowable, and a promise to pay him for it is lawful, and no maintenance. 19 Ed. 4. 3. And here the Case is stronger. It was formerly expended at the Defendants request, and upon a Note given by agreement to a stranger, and a promise to pay it, if by him it shall be thought reasonable, which of it self is a good consideration: And the Court agreed, That a Solicitor of an inferiour rank, may take a recompence, and promise to pay it: But if a person of a

Consideration unlawful. Maintenance.

superiour Rank do it, it were maintenant. Dyer. 356. 12 H. 6. 10. 32 H. 6. 15. An exception was taken that the Action was brought six years after the promise, and breach: But because not pleaded, the Original not certified, nor appearing when sued out, the Court regarded it not. Croo. 1. 113, 114.

Limitation of time for the Action.

Case 23.

Pointer and Pointer. Trin. 6 Jac. B.R. The Case was, If the Plaintiff would marry his Daughter, ad instantiam defendent, that he would give him twenty pound, and twenty French peeces, &c. towards her wedding dinner, so facto he did marry. Non Assump. pro quer, motion to arrest: It was adjudged for the Plaintiff; And 1. Held, that he need not to averre that he married her ad instantiam defend. but that it shall be intended. 2. That twenty French peeces shall be taken for twenty French Crowns, a common Coyn in France, and known to us here. Croo. 1. 141.

Consideration of Marriage.

Promise of twenty French Crowns.

Averment, not necessary.

Case 24.

Pilchard and Kingston. M. 6 Car. 1. B.R. In consideration that the Plaintiff marry Jane S. and that such Lands should be assured for her Joynture, Defendant promised the Plaintiff to pay him a hundred pound, & firmam faceret six hundred pound her portion; shews, that he at the Defendants request espoused, &c. And that the Defendant had not paid, nec firmam faceret, the six hundred pound. Moved that the Declaration is naught, because not shewed that hee might not have had the said portion, or that Jane S. had such a portion: Court held it good enough, for it pursues the words of the Assumpsit in the breach alledged: And the words shall be taken for as much as a Warranty, that shee should have such a portion. And it was adjudged for the Plaintiff. Croo. 1. 146, 147.

Consideration of Marriage.

Pleading.

Certainty.

Promise how taken.

Case 25.

Mills and Mills. Hill. 7. Car. 1. B.R. Assumpsit, In consideration of Marriage, promised to pay twenty pound, viz. ten pound at Michalemas, 1631. and ten pound the residue at Michaelmas, 1632. Action brought for the non-payment of the first ten pound, twenty pound damages given, and two pence for costs; moved that the Action lies not till after Michaelmas, 1632. Court held the contrary, but otherwise upon a bond. And that albeit the Jury had given twenty, for both rates (as it was objected) yet this shall be taken for the first day, and that the other shall be recovered when it becomes due. And it was adjudged for the Plaintiff. Croo. 1. 175. See Dyer. 113. see before Cases 1. 19.

Assumpsit to pay mony at two dates.

Damages.

Case 26.

Cooks and Dowze. Hill. 7. Car. 1. B.R. The Count was, That the Plaintiff had lent to one W. twenty pound at the Defendants request, and that the Defendant, in consideration the Plaintiff would rest content, and forbear the said mony per paululum tempus, promised upon request he would pay it; and alledges in facto, that he forbare per paululum tempus, and required payment; Non Erat brought because the consideration was incertain, but adjudged well enough for when the mony was lent, and forborne, the Plaintiff, upon the Defendants request, agreed for a longer

Consideration, Forbearance for a little time.

Consideration incertain.

Paululum tempus.

longer time, and alledges in fact, that hee forbore till the day of his Action. Croo. 1. 175. See Croo. 1. last publisht. 388. see Cases 388. 55. 144. 162. 174. 194. 283. 273.

Case 27.

Buet and Read. Hill. 9 Car. 1. B. R. The Case was, Whereas the Defendant was indebted to the Plaintiff for Rent arrear, in consideration whereof hee assumed to pay, &c. Being moved in Arrest, &c. It was held by the Court that the Action lyes not; for it is a real Contract, if upon a Lease for years, and a general Assumpsit lyes not for it, no more than upon a Recognizance: Also it may be a Rent charge, Rent seck, or Rent service: and then it is stronger against the Plaintiff: But if it had been alledged, in consideration hee should forbear till such a day, then it had been otherwise; it was adjudged for the Defendant. But this Case was agreed of Sir George Mansell. 17 Jac. who brought an Assumpsit against I. S. In consideration that the Defendant might have, and quietly enjoy, and have the herbage of such a Park for three years, hee promised to pay ten pounds; this was said to be adjudged a good Assumpsit. Croo. 1. 250.

Promise to pay Rent, in consideration of forbearance of it, good, not otherwise.

Promise to pay Rent for a herbage of ground.

Case 28.

Peck and Ambler. M. 9 Car. 1. B. R. Assumpsit, That hee should quietly enjoy the Lands, and that hee would save him harmlesse against any Action against him for them, the day that hee was ousted, and a Judgement had against him in an ejectione firmæ for them. The Defendant pleads, that all this was more than six years since, and so pleads the Statute. Court held because hee failed of his promise to save harmlesse, but suffered this Judgement to be against him, which is damage to the party, though execution be not taken out, that the Action well lyes, and the Statute hinders not: And the damages shall be entire, though the breach be but in part. As if one assume to pay fifty Quarters of Corn, &c. in five years, every year ten Quarters, if hee fail of payment for any, an Assumpsit lyes, and damages shall bee for all. Croo. 1. 254. 255. see before Cases 1. 19. 25.

Promise quietly to enjoy Land, and to save harmless.

Damages. Assumpsit to pay mony at divers daies.

Case 29.

Langden and Stokes. M. 10 Car. 1. B. R. Assumpsit, for a valuable Consideration to go such a Voyage in such a Ship, before August following, and alledges a breach in a non-performance. The Defendant pleaded, that before any breach, such a day, at such a place exoneravit eum of the promise; and the Plaintiff demurred: And it was adjudged for the Defendant, that this was a good discharge, without shewing how. Croo. 1. 279.

Promise to go such Voyage.

Discharge of a Promise. Pleading.

Case 30.

Townsend and Hunt. Croo. 1. 295. Trin. 11 Car. 1. B. R. Assumpsit, In consideration that at the Defendants request, the Plaintiff has sealed a Release, the Defendant assumed, &c. upon a Demurrer argued, that this promise being for a consideration past, was void. Dyer, 272. Berkeley agreed to this: But if it had been a consideration continuing,

Consideration past.

Consideration of a Marriage.

tinuing, as in consideration of the Marriage of his Daughter, or Cousin, which is a Gift in Franck-Marriage, it had been good: But Jones and Crook conceived it good; For if the promise had been made at the time of the Release made, it had been a good consideration; and being made after, yet being made at the Defendants request, and hee hath the benefit of the continuance of it; the promise upon this consideration is good enough, and a Case between Riggs and Bullingham was citen; where, in consideration that the Plaintiff, at the Defendants request, had granted the next avoidance of such a Church, the Defendant at a day after, promised to the Plaintiff a hundred pound: But in this principal Case all the Justices seriatim, delivered their opinions that it was good: And it was adjudged for the Plaintiff. See before Cases 4. 17. After. 34.

Case 31.

Indebitatus Assumpsit. Not good.

Foster and Smith. Hill. 1 Car. 1. Co. B. In consideration that the Defendant was indebted seven pound hee promised, &c. Non Assumpsit. Found for the Plaintiff; motion to arrest, for that the declaration did not shew the cause, for wares, or the like, yet Judgement was given against the Defendant, and that the Verdict did not help. Croo. 1. 21. See before Cases 6. 11.

Case 32.

Consideration to pass with his boat in a River. Agreement perfect and good.

Promise to pay what *I. S.* should set down.

Notice.

Juxon and Thornhill. Mich. 4 Car. 1. B. R. One made Locks and Sluices upon his own Land, to stalt the River of Ouse, and for the Rates that Boats should pay, there being a difference, upon a Petition to Manchester, President, to set down what should be paid, that the Defendant had carried for the Plaintiff divers Tuns of Coal, and in consideration thereof, and that the Plaintiff would suffer him to pass thorow the Locks such a day, promised to pay what Manchester should set down; and hee set down so much for every Tun, which came to, &c. hee requested the Defendant to pay, &c. upon Non Assumpsit, found for the Plaintiff, motion to arrest, Judgement was given for the Plaintiff, and said, that albeit the River be a Common River, and the taking of summes here seemeth illegal, yet the owner may take for his passage on his own ground, and it is fit hee should be paid what was agreed: And albeit no notice were given of the Order to the Defendant, for hee is to take notice as hee is of an Award. Croo. 1. 93. See Case 48.

Case 33.

Promise to pay Rent.

Contract determined.

Acton and Symon. Mich. 11 Car. 1. Assumpsit, In consideration the Plaintiff would demise, &c. promised to pay the Rent of, &c. The Defendant pleads a Surrender, and Acceptance. After Verdict. Moved in Arrest, &c. That the Action lyes not, because it is grounded on a personal promise, in a Real Contract. Bramstone, Jones, &c. held, it lyes, for it is a Collateral and Absolute Promise: But had it been upon an implied Promise; as upon a sale of Goods, &c. it lyes not. Crook doubted, because it is a personal Contract: And by the Lease made, the personal Contract is determined; For it is in vain to have Assumpsit, where hee may have Debt upon a Lease: All the Court denyed, for notwithstanding this promise, it is a Rent as before, and liable to suspension, &c. And three Justices agreed the Action to lye, as if it had been by Covenant,

or

or Obligation further secured: But there ought to be an expresse promise proved, if hee pleaded Non Assumpsit: And that an implied promise would not serve. Berkley. If hee receiver damages to the value, it may be pleaded in Barre to an Action of Debt for the Rent. Bramston and Cook denyed. If one borrow money, and promise to enter into a Bond to pay it, and enters, that Bond determines the Contract. Crook denyed this Case. It was by three Justices adjudged for the Plaintiff. Croo. 1. 299.

Case 34.

Syndham and Worthington. M. 27. 28 Eliz. Co. B. Assumpsit, Where one A. was sued in the Kings Bench by B. and the Plaintiff at the instance of the Defendant became Surety for him, and had execution against the Plaintiff, the Defendant afterwards promised the Plaintiff, that if A. did not pay the money which the Plaintiff had paid to B. that the Defendant would pay it, and averres, that A. did not pay it, nor the Defendant upon request, &c. Windham and Anderson at first held, the Action did not lye, because not made at the time of request: But after all, the Court held it a good consideration, by reason of the precedent request; and the Plaintiff had Judgement. And Anderson said, if I promise one that hath served mée, I will give him ten pound, this is Nudum pactum. Periam and Rhodes contra. And Rhodes said, if I require one to serve mée, and hee doth so for one year; and after the year, I promise him, in consideration of his service, to give him ten pound, Action lyeth: But if I agrée with him to serve mee a year for twenty shillings, and after the year I pay him his twenty shillings, and promise him twenty shillings more; Action will not lye. Croo. 1. last publisht. 42. and in Lo. Coke Rep. 2. page 224, 225. See before Cases 4, 7, 30. and in Case 9. the Case of Hunt and Bate, in Dyer. 272. Agréed in this Case to be good Law. See it before in Case 27.

Request.

Consideration past.

Consideration of Marriage good.

Case 35.

Crispe and Golding. M. 28. 29 Eliz. B. R. Assumpsit, upon Non Assumpsit found for the Plaintiff; Motion to arrest, for the consideration was not well alledged; for hee declared that I. S. was seized in Fee, and made a Lease to him for years, 24 Eliz. by virtue whereof hee entred, and was possessed, and being so possessed, the Defendant, upon communication between him and the Plaintiff, assumed, that if the Plaintiff would seal and deliver to him a deed of assignment of his Lease, and interest in the Land, hee would pay him a hundred pound, and alledged, that hee did seal and deliver a deed of Grant, &c. But doth not say, he was then possessed, and if not, the Grant void, and no consideration; nor doth hee say, he did grant his Lease and Interest, but that hee sealed and delivered a Deed of Grant. But it was adjudged for the Plaintiff. Croo. 1. last publisht. 56.

Consideration to make a Lease.

Pleading of a Consideration good.

Case 36.

Marsh and Cavenford. Trin. 29 Eliz. B. R. Assumpsit. Count, that whereas at the request of the Defendant, there was a communication of a Marriage between the Plaintiff, and the Daughter of the Defendant, and that afterwards hee married her, that afterward the Defendant promised

Consideration of a Marriage past.

mised to pay him a hundred pound. And it was adjudged, albeit it were after Marriage, and that it is not said, the Marriage was at the request of the Defendant; yet that there is a good consideration, for natural affection doth continue, and her advancement is sufficient cause of the promise: And the Judges said, it was adjudged in the Exchequer, That a promise of ten pound, in consideration of counsel given to one; this was good, though the counsel was given before. Croo. 1. last publishe. 59. See before Cases 9. 14. 17. 23, 24.

Case 37.

Marriage-Consideration. Money delivered to be re-paid. Husband and Wife. Action brought by them.

Prat and his Wife, and Taylor. Mich. 29, 30 Eliz. B. R. Assumpsit, That the Wife of the Plaintiff, in consideration that the Defendant should marry her Daughter, and shee had given him ten pound, hee promised to the Wife, that if hee did not marry her Daughter, hee would repay the ten pound, and averres hee did not marry her; in this Case albeit the Husband did not expressly agree to it, yet it was adjudged that the Action was well brought, for the agreement of the Husband, by bringing of the Action, maketh the promise good, ab initio to the Husband, and it being made to her, they may joyn in the Action. Croo. 1. last publishe. 61. See Case 15. before, Case after. 38.

Case 38.

Husband and Wife. Action brought by them.

Consideration of Marriage, good.

Robert Brown and Vicar, and Garborough. M. 29. 30 Eliz. B. R. Assumpsit, hee declareth of a promise made to the Wife dum sola fuit, and alledgeth, that where a Communication was between Jo. Brown, Father of the Plaintiff Robert, and the Defendant, Cousin of the said Robert Brown, and the said feme, when shee was sole, of a Marriage to be had between the said Plaintiff, and the said Jo. Brown, promised to the feme, that if the Marriage did take effect, that hee would assure to them such Land, &c. And the Defendant did then promise to her, that if Jo. Brown did not perform his promise, that the Defendant would give her a hundred pound; and alledges, that the Marriage did take effect, and the Lands were not assured, &c. Upon Non-Assumpsit found for the Plaintiff. And albeit the woman were not neer of kin to the Defendant, yet the Consideration was held to be good; and Judgement given for the Plaintiff, upon a Writ of Error, and the first Judgement affirmed. Croo. 1. last publishe. 63, 64.

Case 39.

Action for Rent.

Consideration good, to make proof.

Sir Anthony Sturlin and Albany. M. 29. 30 Eliz. B. R. The Case was, A. B. was indebted to me for Rent divers years, on a Lease for life, and I demanding it, hee assumed, that if I could shew him a Deed, that the Rent was due, that hee would pay it, and the Arrearages. After I shewed him the Deed, whereby, &c. and yet he had not paid four years in Arrear; upon Non Assumpsit, found for the Plaintiff, and damages assessed to as much as the Rent and Arrearages; it was adjudged for the Plaintiff: For when any thing is to be done by a Plaintiff, be it never so small, it is sufficient consideration to ground the Action upon: And yet there it was said to be adjudged; That when one assumeth to another, that if hee can shew him an Obligation, in which hee was bound to him, that hee would pay him, and hee did shew the Obligation, that no

Action

Action will lye upon this Assumpsit, which was affirmed by the Justices. Croo. 1. last publisht. 67. See Cases 387. 213. 189. 237. 280. 338. 181.

Case 40.

Devenly and Anne Welbore. Hill. 30 Eliz. B. R. Assumpsit against the Defendant as Executrix, of George Welbore, and declareth, that in consideration that the Plaintiff would assure certain Lands to Thomas Percy, at the instance of the said George, he assumed, that if Tho. Percy did not pay him yearly, upon request, ten pounds, and ten loads of Faggots, that hee would pay them. And saith in facto, that he did assure the Land, &c. to the said Thomas Percy, and that the said Tho. Percy, licet sæpius requisitus, did not pay the said ten pounds, and ten Loads of Faggots, nor the said George in his life, nor the Defendant since his death upon Non Assumpsit it was found for the Plaintiff, and moves to arrest the Judgement, that the Declaration was not good; for the payment of the ten pounds was to be upon request, and request is material here, for otherwise the Defendant is not chargeable; and therefore the same request, and the time and place thereof ought to have been expressly alledged; And so the Court held, and therefore Judgement was given against the Plaintiff. Croo. 1. part last publisht. 85. See Case 10. before. Afret. 40.

Against Executors.

Consideration; Assurance of Land.

Promise, that if A. B. did not pay, hee would pay yearly.

Request.

Case 41.

Assumpsit, Where the Defendant is a common Carrier from London to L. in the County of K. and retrorsum, and hee delivered to him three pound to be delivered at the B. in S. That the Defendant in consideratione premissarum, and for the Plaintiff undertake rationabiliter to content him for the Carriage; promiser safely to convey it thither; and to deliver it at the said sign to the Plaintiff; and that he had not so done, upon Non Assumpsit was found for the Plaintiff. And it was said in arrest of Judgement, that the Declaration was not sufficient, because the same did set forth, that hee was a Common Carrier at the time of the delivery, but not that hee is so now: But Judgement was given for the Plaintiff; and it was held, That the consideration was sufficient, and that a Carrier may demand, and the other must pay what is reasonable: As a Taylor, and a Smith, it is usual to appoint them to make Garments, and to shoe Horses, and to say, they will contract them, that set them a work; and such Contracts are good: And there it was said, That if one promise as much for his Tabling, as it shall be reasonably worth, with an Averment that hee was with him so many weeks, and that it was worth so much a week; that this is good enough. Rogers and Head. M. 8 Jac. B. R. Croo. 1. 362.

Common Carrier.

Consideration; three pound delivered to him.

Certainty.

Promise to pay in in *London*.

Good Contracts in Law.

Case 42.

Trewinian and Howell. Hill. 30 Eliz. B. R. Error in a Judgement. The Case was this, A. was indebted to B. and died: The Executor of A. did assume, that if he had Assets, hee would pay him, and this Action was brought, upon Non Assumpsit found for the Plaintiff, (who had Judgement, and Error was brought, and the Error assigned onely this, that the having of goods was no good consideration, but in consideration he forbears to sue, &c. this was agreed to be a good consideration; but in this was the first Judgement affirmed, and that the execution shall be de bonis

Consideration, If he had Assets, that hee would pay him.

Executor.

Assets.

bonis propriis: And therein it seemed to be agreed, that the promise of an Executor in such a Case, if hee have Assets, shall binde him, otherwise not; and such a promise is good without any consideration. Croo. 1. last publisht. 91. See before Case 4.

Case 43.

Consideration, Wooll delivered.

Promise to pay mony.

Osbaston and Garton. H. 30 Eliz. B. R. Error of a Judgement, in Assumpsit, where Garton declared that Osbaston did assume to pay to him for every stone of Wooll hee delivered to him six shillings ten pence, and saith, that hee delivered to him so many stone of Wooll as amounted to thirty nine pound ten shillings. And saith, licet sæpius requisit, &c. he had not paid, upon Non Assumpsit, it was found against the Defendant, and Judgement given, and Error brought and assigned.

Request to be especially alledged.

1. For that the day and place of the request is not set down; for this is not properly a debt, but riseth by reason of the delivery of the stone of Wooll, and therefore ought to allege an expresse Request, being a day that agreeth with the commencement of the promise, and not before.

2. For that the Issue was, that hee did not assume to pay the thirty nine pound ten shillings, &c. which is not alledged in the declaration, but that hee assumed to pay for every stone of Wooll, six shillings six pence, which amounted, &c. And so no Issue was joyned: And of that opinion for both points was the Court, and Judgement was reversed. Croo. 1. last publisht. 91. See before Cases 10.34.40. After 51.52.60.

Case 44.

Usury. Contract unlawful.

Pollard and Scoly. Pasche. 25 Eliz. Co. B. A. sold to B. Oxen, for money to be paid at a day; at that day B. desires a longer day, and gave him time, paying for the forbearance three Quarters of Wheat, which was above the rate of the Statute; in this Case it was resolved, that this did not avoid the first Contract, but the last Contract was void. Croo. 1. last publisht. 20.

Case 45.

Consideration to enjoy Land.

Promise to pay mony yearly.

Hunt and Stone. M. 30. 31 Eliz. B. R. An Assumpsit, That in consideration hee promised the Defendant, that hee should have, and occupy such Lands from such a day, for five years, the Defendant promised to pay him twenty pounds for every year at two Feasts, &c. and averres, that hee hath occupied it for a year and a half, and for thirty pound, for that time brought his Action, and it was adjudged for the Plaintiff, albeit he did not averre that the Defendant had injoyed the Land for five years: But if the promise had been, that hee should enjoy the Land for five years, and in consideration thereof, shall pay him a hundred pound in five years, viz. twenty pound per annum, there the Action lyeth not for part, till the Term be expired: But the agreement being that hee shall pay it by twenty pounds a year, it is otherwise, and several Actions lye for every day of payment. And Rhodes Justice said, so it was lately adjudged in Sir Thomas Josselynes Case; that in consideration one would marry with his Daughter, that hee will pay to him three hundred pound, scilicet, fifty pound by the year during six years, there at the end of every year several Actions lye for fifty pound. Croo. 1. last publisht. 118.119. See before Cases 19. 25. 28.

Payment at several dayes.

Case

Case 46.

Peirson and Hickled. M. 31, 32 Eliz. B. R. Error of a Judgement in the Common Bench. Mich. 30, 31 Eliz. Rot. 3021. In an Assumpsit, where the Plaintiff counts, that in consideration hee by his Servant had delivered to the Defendant two Bills of Debt, of three hundred French Crowns, amounting to fourscore pound, to be received at Roane in Normandy, to his own use, he assigned such a day, &c. and assumed to pay him sixty one pound; upon Non Assumpsit it was found for the Plaintiff, and hee had Judgement and Error assigned; that there is no consideration to charge him, for it appeareth not how hee should recover them, if hee denied payment, nor that they were Bills made to the Plaintiff for what the mony was due, nor to whom, nor what benefit hee may have upon them. 2. That this buying of Bills is maintenance. And for the first of these Causes the Judgement was reversed. But the Court held it no maintenance, but what is usuall amongst Merchants. And Gawdie said, it is no maintenance to assign a debt with a Letter of Attorney, to sue for it, except it be assigned to be recovered, and the party to have part of it. Croo. 1. last publisht. 155. 170. See Cases 49. 226. 315. 327. 389. 391.

Contracts by Merchants.

Consideration, delivery of bills of debt, to be received beyond Sea, promise to pay so much here.

Consideration.

Maintenance.

Case 47.

Pearle and Unger. Pasche. 30 Eliz. B. R. Assumpsit, where hee was possessed of certain Land for years, the Defendant, in consideration that he had occupied the Land, and had paid the Rent to him thirty pound a year all the time hee had occupied it, hee assumed to save him harmlesse for the occupation of the Land alwaies during the Term, as well for the years past, as to come; and alledges, that before the time of the promise, such a day, &c. his beasts were taken damage-feasant, &c. and the Defendant has not saved him harmlesse of it; upon Not guilty, found for the Plaintiff, Motion to arrest, it was adjudged for the Plaintiff, and that the consideration hee was in possession, had paid his Rent, and was to pay his Rent, is sufficient to cause the other to defend his possession for the time past, and to come. Croo. 1. last publisht. 94.

Consideration, that he had enjoyed the Land, and paid the Rent.

Promise to save him harmlesse.

Case 48.

Coles Case. P. 30 Eliz. Co. B. Assumpsit, that where the Defendant was indebted to I. S. twenty pound, in consideration that the Plaintiff at the Defendants request, agreed to give his Bond to I. S. for the said debt, the Defendant did assume to save him harmlesse, and alledgeth hee did give his Bond, &c. and was sued upon it, &c. Upon Non Assumpsit, it was found for the Plaintiff, moved in arrest, for that it was not alledged, that he had given notice that he had made the bond, and was sued upon it; But it was adjudged for the Plaintiff, and held, that the Defendant at his peril must take notice of the Obligation, as being Author. And there Anderson held, that if one be obliged to make such Assurance as I. S. shall advise, hee must take notice of the Assurance devised at his peril: But if it be such Assurance as my Counsel shall advise, there I must give notice of the assurance; and for the other point it was resolved, that hee ought to save him harmlesse, without request, &c. Croo. 1. last publisht. 97. See Case 32.

Consideration, to engage for a debt.

Promise to save him harmless from it.

Pleading.

Notice.

Award.

Case 49.

Promise to deliver the Plaintiffs Grey-hound.

Ireland and *Higgins*. Hill. 31 Eliz. B. R. Assumpsit, That where he was possest of a Grey-hound, which came to the Defendants hands by Trover, that hee promised to deliver it upon request. The Defendant demurred to the declaration, pretending it was ferræ naturæ, and that he had no property in it; and was adjudged for the Plaintiff; and said, that a Mastiff, a Hound (which comprehends a Grey-hound) a Spaniel, and a Turnbriel, are Doggs valuable; wherein a man may have a property, and about which Actions are given, and may lye. Croo. 1. last publishr. 125, 126. And in this Action there needs no Averment that the Dogg was tame, for that shall be intended. Owens Rep. 93.

Averment.

Case 50.

Consideration. If the Plaintiff could prove deceit.

That upon Request he would pay mony.

Scrogs and Griffin. M. 32, 33 Eliz. B. R. Assumpsit, That whereas one Brown, and another, did run for a wager of five pound, which B. did win, and upon speech of it, the Plaintiff did affirm, there was deceit used in the Match: The Defendant adtunc & ibidem, in consideration of twelve pence delivered to him by the Plaintiff, assumed, that if he could prove there was deceit in the running, that hee upon request would give him forty shillings; in this case it was resolved by the Court, that the proof must be in the same Action, and that the Action includes proof and request; and the Plaintiff had Judgement. Croo. 1. last publishr. 205.

Case 51.

To stand to an award, or pay mony.

Vivian and Skipping. Mich. 20. Car. 1. B. R. Upon Assumpsit, in consideration the Plaintiff assumed to stand to the award of I. S. and I. D. and if his failed, to pay forty pound, the Defendant assumed to pay forty pound, if hee did not perform, &c. Plaintiff shewes that hee performed on his part, and that the Defendant did not on his part. Defendant pleads nul. tale fecit arbitrium, and found against him; moved in Arrest, nil Judgement for the Plaintiff, for his pleading generally hee has performed on his part, without shewing the particulars, is good enough: And that hee need not shew a special Request for the payment of the mony. But that the general allegation licet sæpius requisit was good enough. Croo. 1. Bro. See cases 192. 60. 92. 99.

Pleading.

Request.

Case 52.

Consideration, to cut and carry away Trees.

Pleading.

Promise to save harmelesse.

Notice, Request.

Palmer and Knight. M. 10. Car. 1. B. R. Assumpsit, That the Defendant, in consideration that the Plaintiff would cut and carry away such Trees, hee promised he would save him harmelesse, shewes that hee did cut and carry, and was sued, &c. Upon Non Assumpsit, damages, &c. Motion to Arrest Judgement, was good against the Plaintiff, because it lies not shewed in what Court he was sued, nor how he was damnified, nor no notice nor request was made. Croo. 1. 28. See for Notice, Cases 56. 92. 161. 184. 197. 232. 237. 242. 276. 278. 301. 361. 397.

Case 53.

Hall and Marshall, Pasche. 14 Car. 1. B. R. Error in Assumpsit for

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one hundred and thirty pound paid, and to be secured, for consideration he sold all the Furzes, &c. and assumed that he would permit him quietly to enjoy them, and to carry them away, &c. before Michaelmas, quietly, without disturbance; Defendant pleads that hee was disturbed; Error assigned, because hee shews not the time of the disturbance, whether before Michaelmas, otherwise no cause of Action. Court. Being after Verdict, and Non Assumpsit pleaded, it shall be intended within the time. Judgement affirmed. Croo. 1. 357.

For mony paid. Furzes sold, and a promise to enjoy them quietly.

Pleading.

Case 54.

Canway and Aldiom. Croo. 1. 414. Hill. 15 Car. 1. B. R. In. Assumpsit, The Plaintiff declared for amending one Boat, and divers others, the Defendant promised to pay him tant. quant. meruit. In fact, saies, hee deserves thirty pound; upon Non Assumpsit; found for the Plaintiff; moved in Arrest, &c. because hee shewed not in certain what hee amended. Coo. 5. 34. But it was agreed good enough: For making a Gown, and divers other Suits of Apparel, at the Defendants request, and his promise to pay tantum quantum, &c. this is good. Judgement was given for the Plaintiff. Croo. 1. 414.

Upon a promise to pay for the amending of a Boat.

Pleading.

Tantum quantum meruit.

Case 55.

Lutwich and Hussay. Pasche. 25 Eliz. Co. B. Assumpsit, where the Defendant was indebted to the Plaintiff, and the father of the Defendant was also indebted to the Plaintiff in another summe, hee did assume, that if the Plaintiff paululum cessaret, to demand the debt, which hee did owe to him, that hee would pay both the debts, and shews that upon this promise hee did forbear the demand of his mony for half a year; and for not payment of the Fathers debt, the Action was brought; Verdict for the Plaintiff; motion to arrest, for lack of consideration, quod paululum cessaret, and so it was adjudged for the Defendant: And that the forbearance half a year did not amend the Case. Croo. 1. last publisht. 19. See in this Section Cases 70. 144. 162. 174. 194. 283. 383. 251. See Case 70. 264.

Consideration. Forbearance *paululum tempus.*

Promise to pay a debt.

Case 56.

Bavoy and Hasall. Pasche. 31 Eliz. B. R. Assumpsit, where the Defendant had retained him to go from London to Paris in France, upon his occasions, hee assumed to give him as much as would content him; and sheweth that hee went thither, and was content to take five and twenty pound for his labour, and at such a place hee requested the Defendant to pay it, &c. After Judgement for the Plaintiff, it was moved in Arrest, that hee did not shew time and place of Notice of his Contentment, &c. But it was adjudged for the Plaintiff. Croo. 1. last publisht. 132, 133.

Consideration, that he had at his request done a work.

Promise to pay him to his content.

Notice.

Case 57.

Musket and Cole. P. 31 Eliz. B. R. Assumpsit, That in consideration that the Plaintiff had paid to the Defendant, forty pound for the debt of J. Musket his Son, the Defendant assumed to deliver him all the Bills and Obligations, in which the said J. Musket was bound to him; and alledgeth in facto, a request and denial to deliver them: And Judgement was given for the Plaintiff after a Verdict; and motion to arrest

Consideration that hee had paid a debt, promise to deliver up Bills.

arrest it, for that the Plaintiff did not averre that the Defendant had any Bills or Obligations of J. Musket. Croo. 1. last publisht. 133.

Case 58.

Consideration, the pay of 3 s. a Hogg for masting, promise to re-deliver them.

Kirby and Coles. Trin. 32 Eliz. B. R. Assumpsit, That whereas speech was between the Plaintiff and Cooper about the masting of Hoggs for the Plaintiff, in consideration that the Plaintiff gave to Cooper three shillings for every Hogg well masted, the Defendant assumed that they should be well fatted, and re-delivered to him: To which promise hee giving credit, delivered to Cooper a hundred and fifty Hoggs to be masted: And fifty of the Hoggs being not re-delivered, hee brings this Action; the Court after Verdict, motion to arrest, Judgement seemed to bee of opinion with the Plaintiff, and that there was a good consideration, for the promise was the cause of the Contract; and being made at the time of the Communication, it shall charge him, otherwise perhaps if it were made at another time: And there it was said to be adjudged, between Smith and Edmunds, where two Merchants were indebted one to the other, and they agreed to deliver all their Bills and Bonds into the hands of the Defendant, hee did assume that hee would not deliver them till Actions were determined between them, hee delivered to one of them, and the other party brought this Action. Croo. 1. last publish. 137, 138.

Case 59.

Consideration past. Sale of Land.

Promise to make an Assurance.

Warcop and Morse. Trin. 31 Eliz. B. R. Assumpsit, That in consideration he had bought of the Defendant three parcels of Land, upon the tenth of December, hee afterwards, viz. the nineteenth of December, assumed to make him a sufficient assurance thereof before such a day; in this case it was adjudged for the Plaintiff, albeit the consideration were executed; for the assurance was the substance of the Sale and Matter. Croo. 1. last publisht. 138. See before Cases 56, 57.

Case 60.

Consideration, If ejected out of his Term, to pay money.

Pleading.

Wolman and Tye. P. 32 Eliz. B. R. The Defendant did assume for good cause, that if the Plaintiff was ejected, during the Term, by him, or any other, that hee would give him forty seven pounds, and shewed that hee was ejected during the Term, and Judgement for the Plaintiff, without enquiry of damages, stayed in arrest of Judgement, for that he hath not say in his Count, by whom hee was ejected. Gawdy at first held, that by the Plea of the Defendant, who had pleaded a special Plea, this matter was waived, and a demurrer was joyned upon the Plea: But it was adjudged, that this was a thing material and traverseable, and without alledging of it, the Plaintiff had no cause of Action. And no Plea of the Defendant can make it good: As in an Assumpsit to do a thing upon request, if hee doth not alledge the time and place of the Request, it is not good, and advantage may be taken of it: And after Non Assumpsit pleaded, it was adjudged for the Defendant. Croo. 1. last publisht. 179.

Request.

Case 61.

Stanton and Sullyard. Mich. 42 Eliz. B. R. Error in the Exchequer Chamber

Chamber of a Judgement, in the Queens Bench in an Assumpsit, wherein the Plaintiff declared, that hee being Sheriff of Essex, the Defendant assumed, in consideration that the Plaintiff would levy an execution for the Defendant, to pay unto him such a summe (which was allowed by the Statute of 18 Eliz. for a Sheriff to take) Upon Non Assumpsit, it was found and adjudged for the Plaintiff: And it was held by all the Judges, that it was a good consideration, and that the Judgement should be affirmed for that point. But it was reversed for another Error in the Case. Croo. 1. last publisht. 654. See Cases in this Section. 18. 62.

Promise of money by a Sheriff to do execution.

Case 62.

Millard and Clerk. M. 32, 33 Eliz. B. R. Assumpsit, That where the Defendant was arrested at his Suit upon Processe, the Defendant, in consideration that hee might be permitted to go at large, and that the Plaintiff would give his Warrant to the Bailiff that arrested him, to let him go at large, that he would appear at the day of the Return of the Processe, or pay him ten pound, and thewed that hee did give leave, &c. and did not appear, &c. Upon Non Assumpsit found for the Plaintiff; motion to arrest the Judgement, for the Assumpsit was against Law, and void; yet it was adjudged for the Plaintiff; but agreed, that if such an Assumpsit had been made to the Sheriff, or his use, it had been against the Statute, 23 H. 6. Croo. 1. last publisht. 190. See 200. there. In this Section. Cases 18. 61. 110.

Consideration, One arrested to go at large. Promise to pay, or appear at the day.

Against Law.

Case 63.

Greenleafe and Barker. M. 32, 33 Eliz. B. R. Error of a Judgement given in an Assumpsit in Canterbury, That whereas the said B. brought an Assumpsit, and declared, That whereas the said B. was indebted to the said G. by obligation, in five pound to be paid upon the first of November following; in consideration that hee the third of November following, at the request of the Plaintiff, would pay him the same five pound, without Suit or trouble, hee assumed to deliver him a Bond, in which I. S. was indebted to him in twenty shillings, with a Letter of Attorney to sue for it, &c. The Errors assigned.

Consideration, to pay a debt before due, after the day, without Suit.

Promise to deliver a Bond of a Debt due from another, and to give a Letter of Attorney, to sue upon it.

1. That the Consideration was not good, for it was to do that which the Law would compel him to do: But if it had been to pay the money before the day, it were otherwise. So Gawdy and Fenner. For every Consideration must be for the benefit of the Defendant, or some other at his request; or a thing done by the Plaintiff, for which he is worth, or hath mentence. As 37 H. 6. to cure one; and in 20 Eliz. Co. 8. between Worthington and Sydenham in an Assumpsit, That whereas he was Bail for I. S. Servant of the Defendant in the Queens Bench, he did such a day assume to save him harmlesse: But not being alleged that it was at the time of the Bail, or before, nor at his request, but after it, without Consideration, it was void. 9 Ed. 4. Concord to deliver to one his own writings, was void.

Consideration not valuable.

2. For it is not to sue for, and recover the twenty shillings to his own use, and it is rather a charge, than benefit to him. Gawdy and Fenner, one against the other in this; but both of opinion, that for lack of Consideration the Judgement should be reversed.

3. But 23 returned, or the Venire facias, whether aided by the Statute of Jeofailes, doubted: And there it was said to be adjudged, Pasche, 23 Eliz.

23 Eliz. Intr. Cook & Hewet, That in consideration hee would at the request of the Plaintiff, pay him twenty pound upon a Bond at the day when it was due, hee assumed to him to deliver the Bond; this was adjudged a good Consideration: To this was said, that he was to deliver him the same Bond: But here it was Collateral, and they would advise. Croo. 1. last publisht. 194. See in this Section, Case 76.

Case 64.

Consideration to deliver goods attached, to the Plaintiff.

Consideration unlawful.

Promise to save him harmlesse.

Mead and Bygot. P. 33 Eliz. B. R. Assumpsit, That whereas I. Arnold levied a Plaint in the Court of Stepney against Stokes, and a precept to attach the goods of Stokes, was directed to the Plaintiff, being Bailiff there: and whereas hee attached Stokes by two Quarters of Corn, and delivered them to the said Arnold, to deliver them at the next Court, the Defendant assumed to save him harmlesse of the said Corn. Upon Non Assumpsit pleaded, and found for the Plaintiff, it was moved in arrest of Judgement, that the consideration and promise was against Law, and so void: And so was the opinion of the Court. For first an Attachment cannot be of Corn out of sacks. 2. If it may, it is to be kept by the Bailiff, and hee ought not to deliver them out of his hand to the Plaintiff. Croo. 1. part last publisht. 230.

Case 65.

Sur Indebitatus for Rent.

Read and Johnson. Trin. 33 Eliz. B. R. Assumpsit for four and twenty pound, and declares upon an Indebitatus Assumpsit, the Jury found that the Plaintiff let to the Defendant Land for seven years, rendring Rent eight pound per Annum, and the Rent was arrear for three years, and that the Defendant did owe no other Debt, or made any other promise, &c. And it was held by the Justices, that this Action did not lye, but only an Action of debt. Croo. 1. part last publisht. 242.

Case 66.

For money, promised a Surrender of a old, and to get a new Lease.

Lacy and Lacy. Mich. 33, 34 Eliz. B. R. Assumpsit, That whereas the Defendant was possessed of a Lease for years, the Reversion to the Queen, in consideration of ten pound paid by the Plaintiff to him in hand, and of ten pound to be paid to him upon the procuring of a new Lease to the Plaintiff, the Defendant did promise to surrender his Lease, and to procure a new Lease to the Plaintiff, before the end of Trinity Term, and that hee has not performed it; Upon Non Assumpsit, found for the Plaintiff; motion to arrest, &c. for that the Declaration was not good, because hee did not say hee was ready to pay the other ten pound at the end of Trinity Term; it was adjudged for the Plaintiff, for it was not to be paid till the Defendant procured the Lease, so hee was to do the first Act. Croo. 1. last publisht. 249.

Case 67.

Promise, for money, to deliver Corn. How taken.

Pleading.

Brable and Holy-well. Mich. 33, 34 Eliz. B. R. Assumpsit, The Plaintiff counts, that the Defendant, upon a certain consideration, promised to deliver to him forty Quarters of Wheat, between Sturbridge-fair, and Christmas, if the Plaintiff liked thereof at Sturbridge-fair, and hereof, that hee liked thereof; and upon the last of November at

at such a place, required the Defendant to deliver them, which was not done, &c. Upon Non Assumpsit, found for the Plaintiff; motion to arrest, because he did not shew his liking in time and place, nor at Sturbridge-Fair, but at another time and place long after; and therefore Judgement was given against the Defendant. Croo. 1. last publishr. 250.

Case 68.

Hoes and Robotham. Executor of I. S. Assumpsit, That whereas 14 Apr. &c. the Plaintiff was possessed of a Lease for years, and the Testator was possest of the Reversion for years, the Testator, in consideration the Plaintiff would surrender to him all his estate, promised to give him thirty pounds, and alleages in facto, that 20 Apr. &c. he surrendred, &c. And upon Non Assumpsit it was found for the Plaintiff; and after motion to arrest, it was adjudged for the Plaintiff; albeit he did not shew that the first estate did continue in him that did surrender; and albeit the first Term would not be drowned in the second Term; and it was adjudged for the Plaintiff. Croo. 1. last publishr. 302.

Consideration of a Surrender of a Lease. Promise of money.

Pleading.

Case 69.

Jordan and Jordan. Hill. 37 Eliz. B. R. Assumpsit, and declares, whereas he sued a Writ of Latitat against the Defendant, intending it for a debt of forty pound directed to the Sheriff of Wilts, and delivered it to I. S. to procure a Warrant from the Sheriff, to arrest the Defendant, and I. S. obtained a Warrant, that the Defendant, in consideration that I. S. would forbear to arrest him, assumed to I. S. to appear in the Queens Bench at the day in the Writ, to pay the debt, the which he did not: Non Assumpsit, found against him; motion to arrest, because he declares upon a promise made to I. S. and not to himself, and it was adjudged for the Defendant. Croo. 1. last publishr. 369.

Assumpsit to one, good for another.

Case 70.

May and Alvares. Pasche. 37 Eliz. B. R. Assumpsit, and declares, whereas the Defendant was possessed de diversis bonis, of the Plaintiff, that the Defendant, in consideration the Plaintiff would forbear the goods, promised to deliver them within six months, and saith in facto, that he forbare them for six months, and that the Defendant had not yet delivered them; Non Assumpsit, found for the Plaintiff; motion to arrest: For that he saith to forbear, and saith not how long, this is no good consideration; and although he say, he did forbear six months; this will not help, and because he did not say what goods: But the Court held it good for both, and in such Cases, that the Plaintiff is to shew how long he did forbear, as here it was for six months; and it was adjudged for the Plaintiff. Croo. 1. last publishr. 388. See in this Section, Case 55.

Consideration to forbear goods, no time set, good.

Incertainty.

Case 71.

Perkins, and Clerk, and Cleydon. M. 37, 38 Eliz. B. R. Assumpsit. The Case was, a man devised his Lands to be sold by I. S. his Executor, he sells it for forty pound, and dyes intestate, before his receit of the forty pound. Administration of the goods of the first Testator was committed to the Plaintiff, whether he should have an Assumpsit for this forty

Action by an Executor upon the Assumpsit of the Testator.

forty pound, or have any other Remedy; two Judges conceived the Administrator should not have an Action to recover it. Croo. 1. last publisht. 435.

Case 72.

Forbearance of Suit, promise to pay the debt.

Philips and Sackford. M. 37, 38 Eliz. B. R. Error of a Judgement in an Assumpsit, where the Plaintiff declares, That in consideration the Plaintiff would forbear to sue one Brediman for twenty pound debt, which hee owed to him, that hee assumed to pay the said twenty pound before Michaelmas, and saith, hee did not sue, &c. After Judgement it was assigned for Error, that hee did not allege a Request, but generally, licet sæpius requisit, &c. 2. In the consideration it was not shewed for what time hee would forbear; and for the last cause it was after reversed. Croo. 1. last publisht. 455. See in this Section. Cases 55. 70.

Consideration incertain, not valuable.

Case 73.

This Action lyeth not against an Executor upon an Assumpsit of the Testator.

M. 37, 38 Eliz. In the Exchequer Chamber. Stubbings and Rotheram. Error upon a Judgement given in an Assumpsit, against an Executor upon a promise of the Testators, where the Plaintiff declared, that the Testator, in consideration of a Marriage, promised to pay to the Plaintiff a hundred pound, and for not performing promise, brought the Action, and Judgement there given for the Plaintiff; And this was assigned for Error, that the Action lay not against the Executor, and all the Justices and Barons (besides Clerk Baron) held it to be frivolous for this cause; for Anderson said, the reason why debt lyes not against an Executor upon a Contract of the Testators, is, because the Law doth not intend that hee is privy thereunto, or can have notice thereof, and therefore cannot wage his Law herein, as the Testator might. And where debt will not lye, it is not fit that this Action upon a bare promise should tye him, and it stands all upon one reason; and if these Actions should be allowable, it would be very mischievous; wherefore the Judgement was reversed. Quere, whether a Recovery in this Action against an Executor, is allowable against a debt upon an Obligation, if it should be an Administration, for it would be then mischievous to Creditors, and if it should not be an Administration, it would be then mischievous to Executors, that they should be charged therein, and not have allowance thereof against other Creditors, for it may be at the time of the Recovery they did not know of other debts. Note this Term, the like Judgement was given betwen Griggs and Helhouse, in an Action brought against an Administrator upon a promise of the Intestate to pay moneys, &c. Croo. 1. last publisht. 454, 455. And yet the Law is taken to be otherwise at this day, and divers Judgements are against it. See in this Section, Cases 2, 3, 4. 14, 40, 42, 43. 184. See all the Judges resolved in M. Case 225.

Case 74.

To stand to an Award.

Neve and Line. P. 38 Eliz. B. R. In Assumpsit, the Case was, That the Plaintiff declared, that whereas there were Controversies, &c. the Defendant in consideration that the Plaintiff would submit himself to the Arbitration of I. D. &c. submitted, &c. and adjudged that it was good enough, albeit he said not that he would submit, and stand to the award of I. D. Croo. 1. last publisht. 460.

Case

Case 75.

Clifton and Gibbon. P. 38 Eliz. B. R. Assumpsit, The Defendant assumed upon good Consideration, to make such assurance of Land, as the Plaintiffs Council should advise, and the Plaintiff adviseth himself without any counsel, and requires such assurance to be made: And it was ruled by the Court, that hee is bound to do it, as hee requires. And it was adjudged accordingly for the Plaintiff. Croo. 1. last publishe. 465, 466.

Promise to make such assurance of Land, as Council shall advise.

Case 76.

M. 39 Eliz. in Scaccario. Dixon and Adams. Assumpsit, For that I. S. and I. D. were obliged to Adams in forty pound, and thereupon he sued I. S. in the Queens Bench, in which Suit Dixon became Bail; Adams recovered, and upon a Scire facias against Dixon the Bail, had Judgement against him, and hee, without other Processe, paid the condemnation; and Adams, in consideratione inde, assumed to Dixon, to deliver to him the Principal Obligation, and a Letter of Attorney to sue it against I. D. And for not performance hereof, the Action was brought; and upon Non Assumpsit, found for the Plaintiff, hee had Judgement, and Error brought, because it was not a sufficient consideration, and so held by the Court: For Dixon had not done any Act, whereto the Law might not have compelled him; wherefore the Judgement was reversed. Croo. 1. last publishe. 538. See case 63.

Consideration, Bail paid the debt after judgment. The Creditor promises him the Bond, and Letter of Attorney, to sue the principal. Consideration invaluable.

Case 77.

Gower and Capper. H. 39 Eliz. B. R. Assumpsit, the declares, whereas the Defendant was indebted to him by Bill in twenty pounds, that the Defendant, in consideration the Plaintiff assumed to deliver him the said Bill, hee assumed to procure two sufficient Sureties, to be bound to the Plaintiff for the payment of the said twenty pounds, and alledgeth in facto, that hee delivered the said Bill to the Defendant, and that hee, intending to deceive the Plaintiff, produced two Sureties to be bound that were of no value; The Defendant pleads, that the Plaintiff had not delivered to him the said Bill; and it was thereupon demurred: And without Argument adjudged for the Plaintiff, for the alledging that he had delivered the Bill, was but surplusage; for the consideration was the promise to deliver it, and therefore hee needed not to shew that he did make it: For a promise against a promise is a sufficient ground of an Action: And although it be alledged, that hee found Sureties, yet being said they were insufficient, and so admitted by the Defendants Plea and Demurrer, it is all one as if he had never found Sureties, wherefore it was adjudged for the Plaintiff. Croo. 1. last publishe. 543.

Consideration, to deliver up his Bill for a Debt. Promise to bring two Sureties to be bound for it.

Reciprocal Promises.

Case 78.

Rosse and Mosse. P. 39 Eliz. B. R. Error brought in the Exchequer Chamber, of a Judgement given in the Queens Bench in an Assumpsit, where the Plaintiff declared, That in consideration hee would relinquish such a Suit, the Defendant promised to discharge him against all Suits of I. S. And alledges in facto, that hee relinquished his Action, and that the Defendant had not discharged him of such an Action; and Judgement

Consideration, to relinquish a Suit. Promise to discharge him against all Suits of I. S.

 was

Averment.

was given for the Plaintiff. And Error brought and assigned, That this is not any consideration, for hee may relinquish it to day, and afterwards begin it against, he ought also to have averred, that the Action that he was to discharge, was actionable: And for both these Causes it was held to be Error, and the Judgment was reversed. Croo. 1. last publisht. 561.

Case 79.

Consideration to make a Lease of Land.

Promise of mony for it.

Fereby and Lurkin. Pasche. 39 Eliz. Com. B. Assumpsit, and declares, That the Defendant, in consideration the Plaintiff would make a Lease to him of such Land, assumed to pay twenty pound; and alledged in facto, That hee had let the Land to the Defendant for five years, and the Defendant had not paid him the twenty pound; Non Assumpsit, found for the Plaintiff; motion to arrest Judgement, That the Plaintiff had not performed the consideration, and that it shall be intended a Lease for life; But the Court held, That the promise being general to make a Lease, it may be any Lease, viz. at will, which hee might determine presently; and therefore not any consideration to ground an Action; wherefore the Judgement was stayed. Croo. 1. last publisht. 566.

Consideration not valuable.

Case 80.

Upon forbearance of a debt, promise to pay it.

Give day of payment.

Mature and West. P. 41 Eliz. Co. B. Assumpsit, whereas the Defendant was indebted to him in such a summe, in consideration that the Plaintiff would give unto him day of payment, that the Defendant assumed to pay at the day, and alledges, that hee gave unto him such a day, and that the Defendant had not paid: Non Assumpsit, found against the Defendant; it was moved that it was no good consideration, for it is at the Plaintiffs liberty, what day hee will give, so as hee may give the same day the Assumpsit was made, if he will, and so it will not be any benefit to the Defendant. But the Court held it to be well enough. For it is alledged, that hee forbare it for such a time certain; wherefore it was adjudged for the Plaintiff. Croo. 1. last publisht. 665.

Certainty.

Case 81.

For Cheese sold to a Son, promise to pay mony.

Consideration valuable.

Sherwood and Woodward. M. 41 Eliz. B. R. Assumpsit, whereas hee sold to the Defendants Son certain weights of Cheese; The Defendant, in consideration the Plaintiff would deliver it to his Son, assumed, that if the Son did not pay for them, then hee would: And for non-payment the Action was brought: Non Assumpsit, found for the Plaintiff; motion to arrest, for that it was no consideration, to do what he by Law is bound to do, it being his goods by the sale: But it was adjudged a good consideration, for it is an ease to the Bargainee to have them without suit, to deliver the goods of the party himself a another place. Croo. 1. last publisht. 700.

Case 82.

Consideration to pay anothers debt, promise to repay it.

Wichals and Johns. M. 41 Eliz. B. R. Assumpsit, and declares, that in consideration that the Plaintiff, at the instance of the Defendant, had promised to pay a hundred and twenty pound to one Rogers, wherein the Defendant was indebted to the said Rogers, That the Defendant assumed, that hee would pay to the Plaintiff this hundred and twenty pound,

pound, when hee should be required: After Verdict for the Plaintiff it was moved, that this is not any consideration, for it is no benefit to the Defendant, hee is not hereby discharged of his debt: And it is not alledged, that hee paid it to Rogers, nor is the promise alledged to be made to Rogers, and if it had been made to Rogers, hee could not thereupon have maintained an Action against the Plaintiff; for there was not any consideration betwéen them: And of that opinion were Gawdy and Fenner, upon the first motion; for Gawdy said, If one be indebted to mee, and another comes to mee, and promiseth that hee will pay it; this is void, and nothing to purpose: But if hee promise, in consideration I will forbear my debt, that hee will pay it such a day, if the debtor do not pay it, this is good; wherefore, &c. But it was moved again at another day: And Popham and Clench held it to be well enough: for there is a mutual promise the one to the other, so that if the Plaintiff doth not pay it, Rogers the Defendant may have this Action against him: And so also the Defendant shall be charged as to him; and a promise against a promise is a good consideration: But it was moved that the Declaration is not, that the Plaintiff promised to any, to the Defendant, or any other, and therefore it is not good: But that was not well apprehended (as it seems by the Court) But Judgement was given for the Plaintiff. Croo. 1. part last publisht. 703.

No Consideration.

Mutual promises.

Declaration.

Pleading.

Case 83.

Riggs and Billingham. M. 41 Eliz. B. R. Assumpsit, Whereas hee was seized in fee of the Advowson of Beckingham, in the County of Lincoln. In consideration that hee, at the Defendants request, by his Deed dedisset & concessisset, to the Defendant the first, and next avoidance of the said Church, the Defendant the 22. of August, 37 Eliz. assumed to pay to the Plaintiff a hundred pound, &c. Non Assumpsit, found for the Plaintiff; moved in arrest of Judgement, that the Consideration was past, and no time set when the Grant was, and therefore the Assumpsit cannot be good. Dyer. 272. But the Court resolved the contrary: For the Grant being made at his request, it is a sufficient Consideration, although it were divers years before, especially being to the Defendant himself: But if the Grant had been to a stranger, and not at the Defendants request, it had been peradventure otherwise; wherefore it was adjudged for the Plaintiff. Croo. 1. last publisht. 714. See 59. before case 124. 17. 13. 77. After 84. 85.

For the grant of the next avoidance.

Promise to pay mony.

Consideration past, good.

Case 84.

Harpool and Miller. M. 41 Eliz. in Camera Scaccatii. In an Assumpsit, The Plaintiff declared, that whereas there was a Suit in the Starre-Chamber, betwéen one Coldwell, and the said Miller, the Plaintiff, wherein Harpool was Solicitor for him; that Harpool the Defendant, in consideration of a quart of Wine, assumed to save him harmlesse from all costs and charges, which should be awarded against him in the said Suit: And alledges in facto, that the said Cause was afterwards dismissed: And that eight pound costs were then adjudged against Miller the Plaintiff, and that thereupon a Subpena was awarded to pay these costs which hee had paid, &c. It was moved, that this is a void Consideration, for it is maintenance; and of this opinion was Walmsley, and some other of the Justices: But Anderson and Periam held, that it is

Consideration to save harmless from a Suit, for a pinte of Wine.

Consideration unlawful.

not maintenance, for hee doth not assume to expend the costs in Suit, but to save him harmlesse from those which shall be awarded, after they bee awarded, which may be lawful; wherefore, &c. the Cause was afterwards compounded. Croo. 1. last publisht. 731. See cases 83. 85.

Case 85.

Consideration that hee had paid a debt.

Promise to repay it upon request.

Consideration past, good.

Barker and Hallifax. H. 42 Eliz. Com. B. Assumpsit, whereas the Defendant such a day and year, in consideration that the Plaintiff, by the Defendants appointment, and for his debt, paulo ante tunc solvisset to R.S. threescore pound, that the Defendant assumed to pay it upon request, &c. The Defendant pleaded Non Assumpsit, found against him; motion to arrest Judgement: The same was stayed, because the payment of the threescore pound, being a consideration past, was not sufficient to maintain the Action: But Walmsly said, that an Assumpsit, in consideration that you had married my Daughter, to give unto you forty pound, was good, for the affection and consideration always continues. Croo. 1. last publisht. 741.

Case 86.

Promise to pay for Cows bought, and if he fail at the day, to pay more

Glascock and Duffeild. Hill. 42 Eliz. Camera Scaccarii. Assumpsit, in consideration he would sell to the Defendant three Cows for ten pound, that the Defendant promised to pay the ten pound at the Feast of Easter following, and if hee failed, that hee would pay unto him a hundred pound, cum requisitus esset; and alledgeth in facto, that hee sold the Cows to him accordingly: And that the ten pound was not paid at the Feast, whereupon hee brought this Action for the hundred pound, wherein hee recovered: And in a Writ of Error it was held to be a sufficient Consideration for the hundred pound; and the Judgement was affirmed. Croo. 1. last publisht. 747.

Case 87.

Promise to pay for tabling, past and present.

Apportionment of a Contract.

Consideration good.

Bret and I. S. and his wife. P. 42. Eliz. Co. B. Assumpsit, the Case was, That William Dracot, first Husband to the Feme, sent his Son to Table with the Plaintiff for three years, and agreed to give to him for every year eight pound, and dyed within the year: The Feme during her Widdow-hood, in consideration of her natural affection to the Son, and in consideration that the Son should continue during the residue of the time with the Plaintiff, promised to the Plaintiff to pay to him six pound thirteen shillings four pence, for the tabling of the Son for the time past, and eight pound for every year after that hee should continue there with the Plaintiff; afterwards shee married the Defendant; and the Plaintiff brought his Action as well for the six pound thirteen shillings four pence, as for the tabling for the two years following: And it was resolved by the whole Court, that the Action would well lye. And

1. That the first Contract might well be apportioned, it being for Tabling, there ought to be a Recompence, although hee depart, or the Contractor dye within the year.

2. That natural affection of it self is not sufficient Consideration to ground an Assumpsit, without an expresse quid pro quo, which is in this Case, that her Son should after continue his Tabling, which is good, as well for the mony due before, as for what should afterwards become due.

3. That

3. That if the Contract had been onely for the Tabling afterwards, then debt would have layen, and not this Action; but being joyned with another thing, for which hee could not have an Action of debt (as it is here for the six pound thirteen shillings four pence) an Action of the Case lyeth for all (as Debt with other things may be put in Arbitrement) it was adjudged for the Plaintiff. Croo. 1. last publisht. 755. 756. See cases 95. 146. Debt. Arbitrement.

Case 88.

Tisdales Case. Pasche, 42 Eliz. Co. B. Assumpsit. The Case was, That Tisdale, Administrator, had a Judgement against him for the debt of the Intestates, and promised to the recoverer thereof, in consideration that hee would forbear to sue execution against him till octab. Mich. that hee would pay unto him the summe recovered at Michaelmas, and at Michaelmas hee failed of payment, and after, and before octab. Mich. hee brought an Assumpsit, and this being shewn unto the Court, it was moved first, that this Consideration is not sufficient to maintain the Action; for the forbearance between Michaelmas, and octab. Mich. is void: But all the Court held it to be well enough: for if part of the Consideration be good, it sufficeth, and hee ought to allege performance of that part of the Consideration, which is material and valuable: But where a Consideration consists of two or three parts, and every one of them is valuable, there of necessity hee ought to shew performance of every part thereof: They also held, That the Consideration to forbear to sue execution for a time certain, was good cause to ground that Action: But it hath been adjudged, That a Consideration to forbear paululum temporis, is void: for it is not certain; and paululum temporis is not temporis pars. And the Suit after Michaelmas, before octab. was void, because the Assumpsit was not performed by the non-payment at Michaelmas; but of that was the greatest doubt. Croo. 1. last publisht. 758. 759. Promise upon forbearance to pay a debt. Consideration valuable. Forbearance *Paululum temporis.*

Case 89.

Syncock and Pain. M. 42 Eliz. Co. B. Assumpsit. For that the Defendant, in consideration that the Plaintiff had let unto him such Land for a year, promised unto him adtunc & ibidem, to pay pro firma terre predictæ, at the years end twenty pound; upon Non Assumpsit, found for the Plaintiff; it was moved against the Judgement, that this Action lay not, it being not for Rent, but Debt: But all the Court (Popham absente) held, That the Action was maintainable, for it is not a Rent, but a summe in grosse, for which, he making a promise to pay it, in consideration of the Lease, the Action lyes: And it was adjudged for the Plaintiff; But afterwards, because it was but a meer debt, for which an Action of Debt lyes, and it is but a meer Contract, it was reversed. Croo. 1. last publisht. 786. Promise to pay money for a Lease of Land. Action for a Rent.

Case 90.

Hutton and Webb. M. 20 Jac. The Declaration was, in consideration that the Plaintiff such a day, at the request of the Defendant, promised to sell, and deliver to the Defendant twenty Tons of Mill, at the rate of two and twenty shillings the Ton, to the use of the Defendant, the Defendant then and there assumed to pay to the Plaintiff thirty shillings eight pence; this was agreed to be a good Contract, consisting of mutual promises. Bendl. 150. See in this Section, cases 1. 77. 82. Mutual promises, good consideration.

Case

Case 91.

Promise, that if a man do not redeem his Land, that hee will pay him more for it,

Olivers Case, M. 22 Jac. Assumpsit, The Case was, The Father being Copy-holder in the Fee, surrendered to the use of his Son in Fee, on condition to have it again upon payment of fourscore pound: And after it was agreed between them, and the Son promised, that if the Father should fail in payment at the day, that then the Son would pay to him threescore pound; it was moved, that the Consideration is not good: But Ley Chief Justice, and Dodridge held it good enough; and it was after adjudged for the Plaintiff. Bendl. 151.

Consideration good.

Case 92.

Promise of money to marry his Daughter.

Alfred and Blackamore, H. 1 Car. 1. Assumpsit, Declared, that the Defendant promised to him threescore pound, if hee would marry his Daughter; upon the day of Marriage, or within ten dates after, upon request, &c. saith, hee married her, and that hee had not paid, albeit he had been required, &c. It was moved in Arrest, because Notice was not alledged: But by Jones and Whitlock judged to be good, and that the Request did imply it, and so are the Presidents Order given to enter Judgement, Bendl. 159.

Notice, Request.

Case 93.

Promise to pay, *quantum meruerit.*

Delavall and Cleere, M. 2 Car. 1. Action upon the Case, declare, That the Defendant brought eight yards of Satten, and entreated him to make a Suit of it, and to lay out for necessaries, and promised to pay him for the making, so much as it should be worth; and shews, that hee disburst for Taffety, Lace, &c. six pound, and that hee deserves for the making thirteen shillings four pence, Defendant pleads hee was within age at the time, absque hoc, &c. Plaintiff demurr. And Judgement was given for him, for the Plea is repugnant; and it must be shewed on the Infants part, that the Apparel was such as was not necessary for one of his condition. Bendloes 186.

Case 94.

Release of a debt, promise, in consideration to forbear a debt released, void.

Hammon and Roll. P. 18 Car. 1. Co. B. Assumpsit, the Case upon a Special Verdict A. and B. were bound jointly and severally in a Bond to C. who release to A. Afterwards B. in consideration that C. would forbear him the payment of the money due upon the said Bond, till such a day, promised to pay it, &c. this promise was adjudged to be void, for the debt is gone by the Release of one of the Obligers. March. Rep. 203.

Case 95.

Action for meat, drink, &c.

Contract by word put in a Deed, the Parol Contract determined.

Curtice and Columbine. Pasch. 23 Car. 1. Banc. Reg. Mich. 22 Car. 1. Stiles 19, 20. Curtice brings an Action upon the Case, against Columbine upon an Assumpsit by parcel, to finde meat, drink, lodging, &c. for the Plaintiff, and to teach him the Trade of a Weaver: This Agreement was afterwards by consent of both parties put in writing; upon the Trial the Plaintiff obtains a Verdict upon the parol Agreement, and hath Judgement, thereupon the Defendant brings his writ of Error in this Court, and assigns for Error, that there was no Assumpsit declared upon,

upon, or proves sufficient, to warrant the Verdict and Judgement, because that by reducing the Agreement to writing, the Parol Agreement became ipso facto void, and so no Action could be brought upon it; but it ought to have been brought upon the Agreement expressed in the Deed, and the issue ought to have been joyned upon that, and not upon the Verbal Agreement, which is void, the Rule of Court was to shew Cause why Judgement should not be reversed. See before Case 87.

Case 96.

Bruer and Sowthwell. Trin. 23 Car. 1. B. R. Bruer brought an Action upon the Case upon an Assumpsit to pay so much mony for Currance sold unto him discomputando for four months: The Defendant Demurres to the Declaration for the incertainty of it, because it is discomputando, for four months, and expressed not for how much her should discount, and so there can be no certain damages given, and upon this it was stayed till the other party move. Stiles 27. 58. 63.

Declaration. *Discomputando.*

Case 97.

Permitter and Gresly. Mich. 23 Car. 1. Banc. Reg. Permitter brings an Action upon the Case upon an Assumpsit, and declares, that the Defendant, in consideration that the Plaintiff had sold and deliverer unto him such a number of peeces of Stuffs, the Defendant did assume and promise to the Plaintiff, to deliver unto him the value of the Stuffs in such Pipes of Wine, lying in Bradgates Cellar in London, as the Plaintiff should make choice of, and for not performing the same, brings this Action; The Plaintiff obtains a Verdict: The Defendant moves in arrest of Judgement, and shews these Causes,

Promise, that for Stuff hee had delivered, hee should have Wine.

Election.

1. That the Plaintiff doth not averre in his Declaration, that he made any election of the Pipes of Wine; and before such election the Defendant was not bound to deliver them; nay, it was impossible for him to perform the agreement before the election.

2. The Plaintiff doth not set forth that hee made the election, where the Wine was, which he ought to have done, because of the insupportablenesse of the Commodity to be brought to him to make his choice. The Court held, that here ought to be a Special Request made to deliver the Wine, because it is upon a Contract, and an Action of Debt lies not for them, and thereupon arrested the Judgement, till the Plaintiff should move; the same Term Judgement was given against the Plaintiff. Quod nil capeat per Billam. Stiles 49. 74. In the first place it is said to be adjudged for the Defendant; and in the last it is said to be adjudged for the Plaintiff. Quere.

Special Request to be made.

Case 98.

Tanner and Lawrence. Mich. 23 Car. 1. Banc. Reg. Tanner brings an Action upon the Case against Lawrence, upon an Indebitatus Assumpsit, to pay unto him two shillings a peece, for every Cloth he should buy for the Defendant, and declares for so much mony due unto him, and hath a Verdict: The Defendant moves in arrest of Judgement, and shews for cause,

Indebitatus Assumpsit.

Declaration.

1. That it is not averred by the Plaintiff, that hee gave any notice to the Defendant, how many Cloths he had bought for him, and so it is

Request implies a Notice.

not

not certain what is due to him: To this it was answered, that the Cloths were bought for the Defendant himself, and hee may very well take notice of the number of them, without any notice given him.

2. That here is a Request set forth for the payment of the mony, and this implies a notice: But Roll, Justice, to this answer replied, that the request doth not imply a notice, and so is Twists Case, and besides, the notice ought not to be by implication, but must be averred certainly, yet let it be moved again. Stiles 53.

Case 99.

Pleading of Letters of Administration.

Burnet and Bird. Mich. 23 Car. 1. Banc. Reg. Burnet the Administrator of I. S. brings an Action upon the Case against Bird, and declares against him upon an Assumpsit made by the Defendant unto the Intestate, for the payment of a certain summe of mony, for a Marriage Portion at two several dayes of payment, equally, and that for not performing the same in the life time of the Intestate, hee brings this Action. The Plaintiff hath a Verdict; the Defendant moves in arrest of Judgement, and shews for cause, that the Plaintiff doth not well set forth the granting of the Letters of Administration to him, for hee sayes they were granted to him by the Arch-Deacon of such a place, and doth not say, loci illius ordinarium, nor cui administratio pertinuit.

Request.

2. It is said, that the mony was to be paid at two several payments, which amounts to two several promises, viz. a promise to pay the first ten pound on such a day, and a promise to pay the other summe at another day to come, and doth not alledge any particular request made by the Intestate for the first ten pound: But Bacon, Justice, over-ruled both the exceptions, and said to the first, that the Law doth take notice of an Arch-Deacon, being a Publick Ordinary, and therefore it is not needful to expresse, that the Letters were granted per Archidiaconum of such a place, Ordinarium illius loci, or cui administratio pertinuit, but otherwise, if granted within a peculiar Jurisdiction, therefore he moved to shew better matter, or Judgement should be given for the Plaintiff. Stiles 54.

Case 100.

A promise to make one estate for another made.

Consideration past.

Pasche. 24 Eliz. in the Kings Bench. Hughes pl. 19. In an Action upon the Case, upon a promise, the consideration was where I. S. had granted a Term to I. D. that afterwards upon the request of I. S. I. D. did make to W. an Estate for four years, upon which W. brought his Action, and after Verdict it was moved in stay of Judgement, that there was no good consideration, and a difference taken, where the promise was upon the grant, and where afterwards! If it were before, then the condition was good, but if afterwards, it was not good; and it was adjudged, that the Plaintiff nihil capiat per Billam.

Case 101.

Promise to repay a summe paid by the Plaintiff for the Defendant. Consideration past.

Beauchampe and Neggin. Trin. 34 Eliz. B. R. Error of a Judgement in Assumpsit: the first Error was, for that N. the Plaintiff in the Assumpsit declared, that whereas the said B. in consideration that the said N. had paid for him, and at his Request to C. at such a day (which was a year before the promise) ten pound, he assumed to repay it cum inde requisitus

situs esset, and this was said not good, because past. 2. Error was about the Vennee: But it was resolved, that when the payment is laid to be at his request, the consideration doth continue, and so is the common course. Croo. 1. last publisht. 282. See Cases 82, 83, 139. 171.

Case 102.

Pyers and Turner. Trin. 34 Eliz. B.R. Assumpsit, Pyers, as Administrator to Greenway, declares, that whereas one Walter Turner, the Son of the Defendant was bound by obligation of eighteen pounds to the Intestate, which mony was not paid at the day, but the Son moved the Father to pay it for him, the Defendant, in consideration the Intestate would give him a longer day, promised to pay it, and that the intestate gave him a longer day, viz. the sixth of May, &c. Upon Non Assumpsit, found for the Plaintiff; motion to arrest, &c.

1. For that hee shewed not the place where the Administration was committed; as 35 H. 6. 31. but this was not admitted, for it is good in a Declaration, but not in a Barre. No Consideration. Pleading of an Administration.

2. For that here is no Consideration, for the giving of day to the Father; who was not indebted, but this was not material, otherwise if it had been to the Son, sed non allocatur, for by Gawdy, laying all the matter together, that the Father required it upon the request of the Son, and the other giving day, it is good: And a Recovery in this Action shall be a good Barre in debt upon the Bond against the Son; and to this the Court agreed, and the Plaintiff had Judgement. Nota. Trin. 37 Eliz. In the Exchequer Chamber this Judgement was reversed, for it was no Consideration. Croo. 1. last publisht. 283. Recovery in one, a Barre to another Action.

Case 103.

Okes and Kirby. Pasche. 35 Eliz. Co. B. Assumpsit, In consideration the Plaintiff, at the Defendants request, would surcease such a Suit, &c. the Defendant promised to seal him a Bond when required, &c. and alledged in facto, that hee did surcease the Suit, and the Defendant licet sæpius requisit such a day and place had not sealed it: After Verdict it was alledged in Arrest of Judgement. Promise upon stay of a Suit to seal a Bond.

1. It is not said, hee surceased at the request of the Defendant.

2. That the request to seal the Bond was not by the Plaintiff: But they were not allowed for good exceptions, but it was adjudged for the Plaintiff. Croo. 1. last publisht. 299.

Case 104.

Pipes Case. M. 36, 37 Eliz. Com. B. Assumpsit, That whereas the Defendant was arrested for Surety of the Peace, in consideration the Plaintiff would be Bail for him, hee did assume, &c. and alledgeth in facto, that hee became Bail for him, but saith not before whom; And this moved in Arrest, &c. it was held good cause, for the consideration ought to be precisely alledged to be performed, and therefore hee ought to say, before whom hee had entred into Bail; that it might appear hee had authority to take the Bail. Croo. 1. last publisht. 352. Pleading of a Consideration.

Case 105.

Promise upon day given to pay the mony.

Consideration not pursued.

Consideration in Law.

Pasche. 24 Eliz. in the K. B. An Action upon the Case upon a promise, was, the Consideration was, That in Consideration that the Plaintiff daret diem solusionis, the Defendant super se assumpsit, and because hee doth not say in facto, that hee had given day, it was adjudged that no good Consideration was alledged; but if the Consideration were, quod cum indebitatus, &c. the same had been a good Consideration, without any more, for that implies a Consideration in it self. Godb. Rep. 20. page 13. See Cases 106. 111. 141. 259. 336. 341.

Case 106.

Promise of mony for consent to sell Land.

Consideration not pursued.

Pleading.

Fullers Case, Mich. 28, 29 Eliz. In the Common Pleas, A. promiseth unto the eldest Son, that if hee will give his consent, that his Father shall make an assurance unto him of his Lands, that hee will give unto him ten pounds, if hee give his assent, although no assurance be made, yet hee shall maintain an Action upon the promise: But at another day Periam, Justice, said, that in that Case the Son ought to promise to give his assent, or otherwise A. had nothing, if his Son would not give his consent, and is where each hath remedy against the other, it is a good consideration; after in Hillary Term.

Case 107.

Fenner spake, in arrest of Judgement, upon the special Verdict, that because the Assumpsit is but of one part, and the other is at liberty, whether hee will give his consent or not; that therefore, although that hee do consent, that hee shall not recover the ten pounds; also hee said, that the promise was, that if hee would give consent, that his Father should make assurance to him; and here the Assurance is made to A. to the use of the Defendant, and his wife in Tail. Shuttleworth contrary, in as much as his hath performed it by the giving of consent, than when he hath performed it it is not to the purpose, that hee was not tied by a cross Assumpsit to do it, but if hee had not given his consent, hee should have nothing; at last Judgement was given for the Plaintiff. And Periam, Justice, said, in this Case, that if a Covenant be to make an Estate to A. and it is made to B. to the use of A. that he doubted whether that were good or not. Godb. Rep. pl. 106. page 54.

Case 108.

Promise to deliver Wood sold at *D.*

Mich. 28, 29 Eliz. In the Common Pleas. A. bargains with B. for twenty Loads of Wood, and B. promises to deliver them at D. if he fail, an Action upon the Case lyeth: But Periam, Justice, said, that upon a simple Contract for Wood, upon an implicative promise, an Action upon the Case lies not. Rodes, Justice, it be matter of pertinence the Plaintiff be demanded, to lay a summe, &c. Godb. Rep. page 98. pl. 112.

Case 109.

Hatch. and Capel's Case. Mich. 11 Jacobi, in Common Pleas; In an Action upon the Case, upon an Assumpsit brought against the Defendant, the

the Plaintiff set forth, how that one Hallingworth, who was the Defendants Husband, was indebted to the Plaintiff eight pounds ten shillings for Beer, and that he died, and that after his death the Plaintiff demanded the said money of the Defendant his wife, and she, in consideration that he would serve her with Beer, promised that she would pay unto the said Plaintiff eight pound ten shillings, and for the rest of the Beer at such a day certain, and the Plaintiff did averre that he did sell and deliver to her Beer, and gave her day for the payment of the other Money, as also for the Beer delivered unto her, and that at the day she did not pay the money. Cook, and all the other Justices agreed, that the Action would well lye, and that it was a good Assumpsit, and a good consideration; for they said, that the forbearance of the money is a good consideration of it self, and they said, that in every Assumpsit, he who makes the promise, ought to have benefit thereby, and the other is to sustain some losse; and Judgement was given for the Plaintiff. Godb. page 201, pl. 290.

Promise to pay money for Beer past, and to come.

Forbearance of a debt, a good consideration.

Case 110.

Blichman and Martin's Case, Pasche. 12 Jac. Blichman in the Kings Bench, brought an Action upon the Case against Martin, upon an Assumpsit, and recovered, and it was moved, that because the consideration which had the ground of the Action was against Law, that the Judgement might be stayed, for the Plaintiff did allege the same to be in consideration, that if the Plaintiff, being Sheriff of Devonshire, would deliver one who was in Execution for debt, he promised to give twenty pound, and he alledged in facto, that he did deliver him, the debt not being satisfied; And because the consideration was to do a thing which was against the Law, the opinion of the Court was, that it was void, and that the Plaintiff could not have Judgement. Godb. pl. 340. page 250. See cases 18. 61. 109.

To deliver a prisoner.

Consideration against Law.

Case 111.

Killigrew and Harper's Case, Trin. 11 Jacobi, in the Kings Bench. Harper in consideration of a hundred pound, did assume, and promise to Killigrew, that the Lady Vernon, and her Son, should sell to Killigrew such Land, provided that Killigrew did a day certain pay to the said Lady, and her Son, the residue of money, at which time the Lady and her Son shall be ready to assure and make to Killigrew the said Land, and the money of the payment of the one hundred pound of the said day. That Killigrew did the said hundred pound, and that the Contract for the Land shall be made, Killigrew brought his Action upon the said Assumpsit against Harper, and he said matter was found in Arrest of Judgement, the opinion of the Court was against the Plaintiff, that the Action would not lye, and the Judgement was given, Quod quaerendo nihil capiat per Billam. Godb. pl. 342. page 257.

Promise for some money paid, and more to be paid to I.S. that hee shall assure Land.

Consideration not pursued.

Case 112.

Paine and Colledges Case, Trin. 11 Jac. Kings Bench. An Agreement was made between Paine and Colledge, that if Pain (being Chirurgion) did cure Colledge of a great disease, viz. a noli me tangere, that then hee should have ten pound, and that if hee did not cure him,

Promise to a Chirurgion to pay for a cure.

Pleading.

that then for his pains and endeavours, College would give him five pound. In an Action upon the Case brought by Paine, he doth not shew in his Declaration, in what place he used his endeavour and industry, and therefore Judgement was given, that Quærens nihil capiat per Billam. Goldb. pl. 490. page 112.

Case 114.

Promise upon forbearance of a Suit, to pay money.

Finney and Jeffry, Mich. 23 Car. 1. Banco Regis. Finney brings an Action upon the Case against Jeffry, and declares, that the Defendant did assume, and promise unto him, that if he would forbear to sue one who had assaulted him, and beaten him, that he, the Defendant, would pay the Plaintiff as much money as he was demanded by the Assault and Battery, the Plaintiff hath a Verdict, the Defendant moved in arrest of Judgement, and he was for Cause,

Consideration not valuable.

1. That it doth not appear by the Declaration, that the Plaintiff had any intention to sue the party for the Assault and Battery, and so the Assumpsit, in consideration that he would forbear to sue for it, is no consideration.

Pleading.

2. He doth not set forth, that he gave any Notice to the Defendant that damages, he was endamaged by the Battery, but the Court held that the Plaintiff needed not to allege, that he had an intent to sue the party, or that the Defendant had notice of it, when the Assumpsit was made, and for the notice which he gave, the Plaintiff was endamaged, the reason, to persuade the Assumpsit made, was sufficient, and so gave Judgement for the Plaintiff. Siles Rep. page 101.

Case 115.

Promise to joyn in a surrender of Land.

Freeborne against Purchase. Trin. 24 Car. 1. Banco Regis. Hil. 23 Car. 1. Rot. 1575. Freeborne brought an Action upon the Case against Purchase, and declares, that the Defendant, in consideration that the Plaintiff had paid unto him such a summe of money, did assume, and promise to joyn in the surrender of certain Copy-hold Lands, and that for not performing this promise, he brings execution. The Defendant demurrs upon the Declaration, and saith, that the Plaintiff hath not alledge, that he ever made request to the Defendant to joyn in the surrender, that he ought to do, for it was not a single act to be done by the Defendant alone, but he was to joyn in it with another Roll Justice, and the reason is, that the Defendant shall have his discretion, and he hath not set forth, that he was ready to joyn, which he should have done, and before the Mischief was wrought, for, yet there is a particular time, wherein he should joyn, and before the Plaintiff, or any other, may be admitted to joyn in a surrender, which may be in Court, and the Court will not, as in the hands of two Tenants. Cases Cyrus and Walker's Case. Case 1. also the Plaintiff ought to have shewed, that there is such particular Custome in the Mannor, that a Copy-hold Tenant may surrender into the hands of two Tenants of the Mannor, or else such a Custome cannot be taken notice of; therefore let a Nil capiat per Billam be entred against the Plaintiff. Siles Rep. page 102.

Request.

Pleading.

Case 116.

Paine and Collegge between Paine and Collegge, that if Paine (being Clerk) did cure a great Collegge of a great illness, viz. a foul ore tangere, then he should have ten pounds, and that if he did not cure him,

Case 115.

Bragnell against Goff. 24 Car. 2. Banco Regis. Goff brings an Action upon an Assumpsit against Bragnell, and hath a Decree and a Judgement against him, the Defendant brings a Writ of Error to reverse this Judgement. The Case was this, Bragnell did assume, and promise unto Goff, that in consideration that Goff would marry the Daughter of Bragnell, that he would be bound to give over his Shop in Lyn, and not use his Trade in Basingstock, and for default made shall pay fifty pounds, and for not performing this promise he had his Judgement. The Error assigned was, that there is a breach laid of all the promises, which consists of divers parts, and support of it against Law, namely, the plaintiff to be bound not to use his Trade, and yet pennages are given unto the party all, which is not good. Wild on Counsel on the other side, that in 2 H. 8. 5. urged, is no Judgement given, again the case it is not that he shall be bound not to use his Trade generally, but only in the Town of Basingstock, and he may use it any where else, and therefore it is not against Law. Roll, Justice, if the thing be generally, that he shall not use his Trade in such a place, without any consideration, this is all: But where there, if there be a Consideration, he may use it for the Otherwise, for a Consideration, and it shall bind him: The Judgement, the Court Saturday next, Judgement shall not be reversed, with two after many Motions and Arguments, that good Assumpsit made under the Defendants Seal, and nothing shall be kept that which is impossible. Rolls, Justice, I say, if nothing in consideration, the other things, totally others, wherein some are impossible, the damages shall be taken to be given for the rest, and not for that that is impossible, and so, the Judgement was reversed. See Cases 116.

Case 116.

Ayre against Sibs. Mich. 20 Car. 2. Banco Regis. Ayre brought an Action against Sibs upon the Case, upon Assumpsit to pay several Summs of Rent against another man, and upon an Account made between him and the Defendant. The plaintiff has a Judgement, the Defendant moves in Arrest of Judgement, and for cause, being sued on Account upon the Case doth not lye upon a promise to pay a Rent appearing due upon Account, for the Rent was due by a Real Contract, and upon that the Plaintiff had remedy without the promise. To this the Court said, that this Action doth not lye for a Rent alone due, upon a Real Contract, but for the Rent, with other things, it may lye, yet for the Judgement be stayed, for there is some consideration to ground this promise, but only the [illegible] Rent, [illegible] lye, for it is in the nature, [illegible] page 13. [illegible] Defendant, [illegible] the Action [illegible] for not performing this promise. [illegible]

Case 117.

Tracy against Poole. Mich. 24 Car. 2. Banco Regis. Tracy brought his Action upon the Case against Poole, upon a promise, Chamber [illegible] Poole, the Defendant, in consideration of a Marriage [illegible] the plaintiff Son, and the Defendant [illegible] Land upon him upon the marriage, [illegible] but that

Consideration of Marriage.

Promise to leave his Trade

Promise of many parts, some unlawful.

Consideration against Law.

To pay debt, appearing upon Account due.

Promise to pay a Rent due before.

Consideration in Law.

Consideration, a Marriage and settling of land for Joynture.

Promise of an assurance of a Marriage portion.

within such a time, after the Marriage had, hee and his Son should be bound per scriptum suum debita juris forma fiend. unto the Plaintiff, for the payment of three thousand pound for a Marriage-portion, and assigns the breach, that the Defendant and his Son did not become bound per scriptum suum debita juris forma fiend: and the breach is, that they did not give security per scriptum suum Obligatorium, which agrees not with the Assumpsit, for the Defendant might give security by a Judgement, which is not scriptum suum; yet it is debita forma juris: tacknes upon this the Judgement was for that time stayed, though then Bacon Justice, inclined, that the speech was well assigned; because in common construction it shall be intended, that the Defendant assumed to give his own, and his Sons Bond for security. The Court bid the Plaintiff take his Judgement, unless better matter were shewed on Monday following. Siles Rep. page 143.

Pleading, no.

Case XXII.

Harris against Gibbons, Mich. 1649. Pasch. 1649. Banco Regis. Gibbons brought an Action upon the Case against Harris, upon an Assumpsit, and declares, that the Defendant, in consideration that the Plaintiff should let unto the Defendant a Booth in Southbridge Fair, did assume and promise to pay the Plaintiff ten pounds for the same, and to pay the Plaintiff for all such Wine and Hopps as shall be spent in the Booth during the Fair. The Plaintiff had a Verdict and Judgement. The Defendant brought his Writ of Error to reverse this Judgement, and assigned this Error, that it did not appear in the Declaration, that the Fair was open when the Action was brought, and consequently that there was no cause of Action. But I conferred of Counsel with the Defendant in the Writ of Error, said, it shall be intended it was open, for the Suing there during the Fair, is the cause of Action. Roll, Chief Justice, took another exception; That the Declaration doth not expresse that the Plaintiff gave notice how much Wine and Hopps hee laid in the Booth during the Fair, nor that hee made any demand of the payment of any summes of money, and so the Defendant could not know how much money he should pay, and therefore the Declaration is not good, because it is too general, therefore advise upon it, you will maintain it or no, and because the Counsel desired time to be further heard in it, the Judgement was reversed. Siles Rep. page 1[illegible]

Consideration to let a Booth in a Fair.

promise to pay mony for it, and for the Wine and Hopps spent during the Fair.

Pleading.

Case XXIII.

Johns against Leviston, Mich. 1649. Banco Regis. John brought an Action of Debt against Leviston, upon an Assumpsit, that the Defendant should enter into a Recognizance unto the Plaintiff, for so much money as John Hall did owe unto the Plaintiff, if the Plaintiff would take common Bail of him the Defendant, if Hall should appeare at such a day, and for not performing this promise, the Action was brought; upon Non Assumpsit pleaded, there was an Issue joyned, and a Verdict found for the Plaintiff: The Defendant moved in arrest of Judgement, that it doth not appear that there was any notice given by the Plaintiff to the Defendant, that such thing was had to the Plaintiff from Hall John Hall, as there ought to have been. Roll, Chief Justice, all. Forasmuch as it doth not materially to know of the time of the Assumpsit, held much more hereof also, because it is not mentioned, and if it were, the

Consideration to take common Bail in an Action.

Promise to give a Judgement, if the Defendant dye before such a day.

Notice.

might

might have gone to Sir John Hall, to tell him, and so it shall not onely be intended to be in the knowledge of the Defendant himself, but that he might have also knowledge of it by others; Jerman, Justice, doubted, but Nicholas, and Ask, Judges, were of Rolls opinion, and the Plaintiff ordered to take his Judgement, if better matter were not shewn. Stiles Rep. page 184.

Case 120.

Williamson against Mead. Hill. 1649. Banco Regis. Williamson brought an Action upon the Case against Mead, and declared upon three Assumpsits made by the Defendant to the Plaintiff, that the Defendants Son should pay such a summe of money to the Plaintiff, for his boarding with him, when hee should be thereunto required; upon Non Assumpsit pleaded, and a Verdict for the Plaintiff, the Defendant moved in arrest of Judgement, That the Plaintiff doth not shew that he did require the Son to pay the money which the Defendant did assume should be paid upon request; but onely saith, that the Defendant licet sæpius requisitus non solvet: The Judgement was arrested till cause should be shewn to the contrary: The same day it was moved again, and the Counsel urged, that the request was not necessary to be made, and prayed for Judgement: But Roll, Chief Justice, answered, that this was a Collateral promise, and therefore the request must be averred to be made to the Son, therefore the Plaintiff can have no Judgement, and so nil capiat per Billam was ruled to be entred. Stiles 107, 108.

Promise to pay a debt due, upon request.

Special request to be made.

Averment.

Case 121.

Chase and Jones against Lovering. Trin. 1650. Banco sup. Stiles 226. Chase and Jones brought an Action upon the Case against Lovering, upon a promise made by the Defendant to the Plaintiffs, to pay unto them eighty four pound, out of the fraught of a Ship, and for not paying it, the Plaintiff brings his Action; upon Non Assumpsit pleaded, there was an Issue joyned, and a Verdict found for the Plaintiff: The Defendant moved in Arrest of Judgement, and alledgeth cause, that the Plaintiffs Averment in the Declaration of the non-payment of the money, viz. eighty four pound, is not good, for it doth not appear by the Averment, that there was any fraught due for the Ship, out of which the monies were to be paid. Roll, Chief Justice, answered, that the Plaintiff ought to have averred, that there was monies due for the fraught of the Ship, otherwise how can it be known whether there be any monies due to be paid out of them, therefore the Averment is very uncertain, to whom Jerman, Nicholas, and Ash, Justices, agreed. Roll, Chief Justice, added, that it is part of the promise, that the money shall be paid out of the fraught, and as the Averment is, the words cannot stand together, and here is no demand for the monies to be paid out of the fraught, therefore for against the Plaintiff, det therefore nil capiat per Billam. Stiles.

Promise to pay so much out of the fraught of a Ship.

Pleading of an Averment.

Case 122.

Master against Rushbrook. Hilar. 1651. Banco Regis. Stiles 227. A Writ of Error was brought to reverse a Judgement given in an Action upon the Case upon an Assumpsit, to pay certain wages, the exceptions thereunto were, first, that the plaint was not filed, and the Declaration

Count naught.

Variance.

claration is to the damages of twenty, and so variance between the Plaint, and the Declaration; next, the promise is laid to be made the first of May, 1641. to serve the Defendant for a year, and hee said, that hee served him from the first of May, for a year, whereas the first of May ought to be excluded, so that hee ought to say, that hee served for a year from the making of the promise. Roll, Chief Justice, said, that there is variance between the Plaint, and the Declaration, but it is helped by the Verdict, for that findes that hee hath served a whole year; but two other Exceptions were taken at the Barre.

1. That the Declaration was pro salore, instead of salario. And

2. It is said deserviret pro deservivit, and upon these the Court ordered the Defendant in the Writ of Error, to shew cause why the Judgement should not be reversed. Stiles Rep. 2.

Case 123.

Consideration, to take him his debtor, for such a Debt.

Newcoming against Leigh. Hill. 1650. Banco Regis. Leigh did assume, and promise unto Newcoming, that if Newcoming would take one Low for his Debtor, in the room of one Cooper, and would spare Low until such a time for the mony, that then hee would pay the mony unto Newcoming, if hee did not, and upon this Assumpsit: Newcoming brought his Action against Leigh, the question was, whether this was a good Assumpsit; and the Court held it was not, because it is a Collateral thing; and hee doth not say, that hee will discharge Cooper, and so Newcoming may sue Cooper, notwithstanding the Assumpsit; for though it may be it was the intention of the parties to discharge Cooper, yet it appears not so by the words of the Assumpsit set forth; and it was thus said by Roll, that if I promise to pay to John a Down, a Debt, which John a Stylo oweth to John a Down; this is Nudum pactum. Stiles 249. See cases 4. 39. 63. 82. 84. 152.

Promise to pay it.

Nudum pactum.

Case 124.

Declaration imperfect.

Coleman against Blunden. Hill. 1650. Banco Regis. Coleman brought an Action upon the Case upon an Assumpsit against Blunden, and had a Verdict against him in Arrest of Judgement, it was moved, that it doth not appear by the Declaration, to whom the Assumpsit was made, but it onely says, superse Assumpsit, and upon this exception the Court ruled a Nil capiat per Billam. Stiles 255.

Case 125.

Promise upon a surrender of Land to pay mony.

Sham and Sham. Pasche. 1651. Banco Regis. Sham brought an Action upon the Case upon an Assumpsit against Sham, and declares, that in consideration that the Plaintiff would surrender to the Defendant, and his Heirs, a Copyhold, according to the Custome of the Manor, the Defendant did assume, and promise to the Plaintiff, to pay unto him five hundred pound, and for breach of this promise hee brought his Action, and obtains a Verdict against the Defendant: The Defendant moved in Arrest of Judgement, and took this exception, viz. that the consideration on the Plaintiffs part was not performed; for the consideration was, that hee should surrender the Copyhold to the Defendant, and his Heirs, and hee hath set forth the surrender to be in the hands of a Copyhold Tenant of the Manor, to the use of the Defendant, which is

Pleading.

no

no surrender, until it be presented in the next Court, and so it is incertain whether it shall take effect or no. Roll, Chief Justice, said, it is expressed to be secundum Consuetudinem Manerii; yet this is not sufficient, for it is not an effectual surrender, until it be presented at the Court; therefore let Judgement stay till the Plaintiff move. Stiles 256, 257. 280.

Case 126.

Shau against Bilby. Trin. 1651. Banco sup. Shau brought an Action upon the Case upon a promise against Bilby, and declares, that in consideration that the Plaintiff should surrender a Coppy-hold unto I. S. and his Heirs, according to the Custome of the Manor, the Defendant did assume, and promise to pay unto him a hundred pound, and that hee did surrender the Coppy-hold unto the hands of a Customary Tenant of the Manor, according to the Custome of the Manor, to the use of I. S. and his Heirs, and that the Defendant had not paid the hundred pounds, according to his promise, and declares to his damage, &c. Upon Non Assumpsit pleaded, and Issue thereupon joyned, a Verdict was found for the Plaintiff; it was moved in arrest of Judgement by Latch of Counsel with the Defendant, that the Declaration is not good. Stiles 280.

Promise upon the surrender of land to pay money.

Case 127.

Dowse against Masters. Pasche. 1651. Banco Regis. Dowse brought an Action of Debt upon an Indebitatus Assumpsit, against Masters for five pound, in which the Defendant pleaded, that hee did deliver Bills to the Plaintiff, to the value of six pound, in which the Plaintiff was indebted to him, which Bills the Plaintiff did accept in full satisfaction; the Plaintiff replied protestando, that hee was not indebted to the Defendant, that hee did not receive Bills to the value of six pound in satisfaction; upon this a Demurrer was joyned. Roll, Chief Justice, said, the Plea of the Defendant is ill; for hee doth not say, that hee delivered the Bills in full satisfaction, but that the Plaintiff received them in full satisfaction, which is not good, for the Plaintiffs receiving of the Bills, must be as they were delivered, and not otherwaies, and that is not expressed, therefore let the Plaintiff take his Judgement, nisi, &c. Stiles. 263.

Indebitatus.

Bills delivered in satisfaction of a debt.

Pleading.

Case 128.

Brow. & Gold. Austin versus Jarvis. Assumpsit. Trin. 13 Jac. tor. 2180. The Plaintiff declares, that such a day and year hee bought of the Defendant a Horse for a peece of gold of the value two and twenty shillings by him to the Defendant then in hand paid, and for eleven pound to be paid to the Defendant at the day of death, or marriage of the Plaintiff, which should first happen, for payment of which eleven pound the Plaintiff should bring to the Defendant one sufficient man to be bound, together with the Plaintiff to the Defendant, the Defendant in consideration thereof assumes to deliver the said Horse to the Plaintiff, when he should be thereunto requested; and the Plaintiff averres, that such a day hee brought the Defendant one sufficient man, viz. I. A. de B. Yeoman, to be bound together with the Plaintiff, to the said Defendant for the payment of the said eleven pound, and shews, that hee requested the Defendant to deliver the said Horse, yet the Defendant hath not delivered him, according to his promise. The Defendant pleads Non Assumpsit, and a

Promise to pay for a Horse in hand so much, and to give security for the rest.

Request.

Infant.

Verdict for the Plaintiff, and moved in arrest of Judgement, for he could not perform his promise, by reason of his Infancy; and therefore the promise void, and another exception, for that it was not alledged, in what summe the Plaintiff and his Surety offered to be bound. and Judgement was, that the Plaintiff Nihil capiat per breve. Brownl. and Goldsb. page 11.

Case 129.

It was agreed, That an Assumpsit the same day is good, for there is no division of a day. Latch. Rep. 151.

Case 130.

Consideration to credit his Servant with Wares.

Promise to pay for it.

Gore versus Colthorpe. Trin. 5. Jac. rotulo. Brownl. and Goldsb. Page 13. The Declaration was, in consideration that the Plaintiff would give credit to E. C. then servant to the Defendant, for any thing the said E. should deal for, to the use of the Defendant, and the Defendant, promised that hee would see the Plaintiff contented, that which the said E. should deal for with the Plaintiff, for the use of the Defendant any way, when the said Defendant thereof (after it should become due) should be requested, and a special Verdict, by which it was found, that the Defendant promised to see the Plaintiff contented, that which the above-named E. C. should deal for with the Plaintiff, for the use of the said Defendant any way, the Judgement of the Court was, that the Verdict did not maintain the Declaration, because for Collateral matters, which are not duties, a request is material, and are not like a duty as for debt, which is due, and no day of payment expressed, that shall be alledged to be when hee shall be thereunto requested, generally. For if I sell my Horse for ten pound, and no day of payment, that shall be alledged in the Court, Cum inde requisitus esset; and one case of Peters was cited, which was grounded upon a promise made in this manner; Marry my Niece, and when I come from London, I will give you a hundred pound, and the Action was brought in this manner, viz. in consideration that he would marry her, A. promised to pay the Plaintiff a hundred pound after he returned from London, when he was thereunto requested, and for these words, when hee was thereunto requested, the Action was maintainable.

Demand special.

Case 131.

Promise to pay a Rent due before.

Green versus Harrington. Brownl. and Goldsb. Page 14. Trin. 17 Jac. rotulo. 953. Assumpsit the Plaintiff declares, that the Defendant such a day was indebted to the Plaintiff in ten pound, for Rent due to the Plaintiff for one year ended at Michaelmas then last past, for divers Lands in H. demised to the Defendant by the Plaintiff; the Defendant, in consideration thereof, promised to pay the Plaintiff the said ten pound, when he should be thereunto requested; The Defendant pleads Non Assumpsit, and after Verdict given for the Plaintiff, it was moved in arrest of Judgement, that there was no consideration to maintain the Action, because an Action of Debt lay upon the first Contract, being in the realty, for upon an implied promise, no Action will lye, where it is in the realty, except there be a special promise made, upon a Collateral cause, viz. If the Plaintiff has demanded Suit for the said ten pound, and the Defendant, in consideration that he would forbear to sue, promises to pay, &c. and the like; for if a man be bound in a bond to pay money,

Implicite promise.

mony, and the day past, now an Action of the Case will not lye for that mony, except there be a Collateral promise, and so in like cases; and Judgement was given against the Plaintiff.

Case 132.

Sommers and Dugs Case. Pasche. 22. Jac. Co. B. Assumpsit. The Plaintiff declared, that the Defendant was Rector of the Rectory of D. and that he and all his predecessors had used to have all manner of Tithes; and that the Plaintiff occupied a hundred Acres of Land in the Parish, and that the Defendant promised to the Plaintiff, in consideration that hee would plant his Land with Hopps, and so make the Tithes to be the better, that hee would allow him towards every Acre he should so plant, forty shillings towards the charge in planting them; and shewed, that he had planted one Acre at the request of the Defendant, and so, &c. It was moved, whether this be a good consideration, because the Tithes are not bettered by the planting, but by the growing and increase of them, and it is not averred, that the Tithes were of better value than they were before; the Court doubted of it: But the Court said, that if the Plaintiff had shewed in his Declaration, that hee might have made more benefit of his Land by other waies, than by the planting of it with Hopps, the Tithes also being bettered, the case had been clear. Winch. 80.

Consideration to plant his ground with Hopps.

Promise to allow forty shillings an Acre for it.

Case 133.

Totnam and Hopkins Case. Trin. 21 Jac. B. R. Assumpsit. The Plaintiff declared, that in consideration of twenty pound paid, the Defendant did promise primo Martii, to pay and deliver the Plaintiff twenty Quarters of Barley the next Seed-time Upon Non Assumpsit, it was found for the Plaintiff; it was moved that the Plaintiff ought to have shewed in his Declaration, when the Seed-time was, which hee hath not done: But it was resolved per Curiam, that hee need not do, because the Action is brought half a year after the promise, for not payment and delivery of the same at Seed-time, which was betwixt the promise, and the Assumpsit, and here it appears the Action was brought at Michaelmas, by which it appears sufficiently, that the Seed-time was past. Adjudged for the Plaintiff. Godb. 350.

Promise to deliver Corn at Seed-time.

Pleading.

Case 134.

Smith and Staffords Case. Hill. 15 Jac. C. B. Rot. 966. Assumpsit, brought by Husband and Wife against I. S. Executor of T. S. the Plaintiff declared, that there was a Communication had of a Marriage, between the Wife, the Plaintiff, and the said T. S. that the said T. S. in consideration that the said Wife, the Plaintiff, would take him to her Husband, hee promised, that if after the Marriage he the said T. S. dyed, living with the said Wife, that he would leave her worth a hundred pound, and averres that shee did marry him, who died, and did not leave her worth a hundred pound: Upon Non Assumpsit, it was found for the Plaintiff; it was moved, That by the inter-marriage the Action was extinguished, and thereby the promise was released; and of that opinion was Hobert, Justice; but Winch and Hutten held the contrary, for that the Law will not work a Release contrary to the intent of the parties, and that the Marriage will not destroy that which it self creates. Hutton 17. 10 Rep. 139. 33. 95. See the like, case 230.

Promise, in consideration of Marriage, to leave the woman worth a hundred pound at his death.

Action discharged.

Case 135, and 136.

Consideration to procure a License of the Lord to alien.

Promise to pay him for his pains.

Consideration good.

Hall and Woollens Case. Trin. 18 Jac. Assumpsit, The Plaintiff declared, that whereas the Defendant was possessed of a House and Land, in M. in the County of I. for one and twenty years, of Sir John W. and whereas one I. D. was in speech of buying the said Lease, and the Defendant could not sell it without the consent of Sir John W. The Defendant, in consideration that the Plaintiff would procure Licence of the said Sir John, promised to pay him so much as hee should visitate, and deserve therefore; and added, hee did procure a Licence, and disturbed such assumes, and deserved for his labour such a summe: The Defendant demurred upon the declaration; the question was, if that were a good consideration, or no; for that it did not appear that there was any restraint upon him from making any assignment; but it was adjudged a good consideration, for it appears there was privity betwixt them, and it may be hee had promised, that hee would not assign it, without his Licence; and it was at his instance, and for his satisfaction; adjudged for the Plaintiff. Hutten. 39.

Case 137.

Promise of a childes part in Marriage.

Certainty.

Silvesters Case. Trin. 17 Jac. B. R. Assumpsit, A. promised B. that if hee would marry his Daughter, hee would give with her a childes part; and at the time of his death, hee would give her as much as to any of his children, excepting his eldest Son, and made his Executors, and died. B. brought an Action against his Executors, and shewed, that the Executor had not given her a childes part, and that such a younger Son of the Testator had a hundred pound given him; it was adjudged, that the promise of a childes part was incertain; but being as much as any of his children had, and shewing that a younger Son had a hundred pound, it was certain enough, adjudged for the Plaintiff. Popham. 148. See Arnold. and Dicksons Case. 17 Jac. Popham. 183. act. See case 241.

Case 138.

Consideration to discharge of Execution.

Promise to pay meny.

Pleading.

Popham. 206. 2 Car. I. in B. R. Assumpsit, that in case the Plaintiff would discharge B. of an Execution, the Defendant promised to pay him ten pound, in an Assumpsit, the Plaintiff shewed, Quod exoneravit illam de executione, generally, and the discharge was by word, and not by writing; it was moved that the consideration was laid to be too general, but it was resolved by the Court, that the declaration was well enough, and hee need not plead, the same was by writing, for the discharge by word was a sufficient discharge.

Case 139.

Promise to discharge a man of a former engagement.

Consideration past.

Boldens Case. Mich. 1 Jac. B. R. in Assumpsit, the Defendant requested the Plaintiff to give his credit for one I. S. to I. D. for two Tuns of Wine, value fifty pound, the Plaintiff gave Bond to I. D. of a hundred pound for the payment thereof, upon which he was sued, and forced to pay thirty pound, in consideration of which the Defendant promised to pay the fifty pound at such a day, and did not pay it, for which the Action was brought; it was moved, the Consideration was not sufficient, because it was upon a Consideration past: But because I. S. had

had credit given him by I.D. at the Defendants request, upon the Plaintiffs undertakings, the Court held the consideration to be sufficient, and not past; adjudged for the Plaintiff. Croo. 2. part 18. See cases 170,171.

Case 140.

Bidwell and Cottons Case. Hill. 15 Jac. rot. 1765. Assumpsit, the Plaintiff declared, that he being an Attorney, Mich. 14 Jac. prosecuted an Attachment of privilege against the Testator, returnable in Hillary Term, and the Testator knowing of it, in consideration, that at his request the Plaintiff would forbear to prosecute the said Writ any further against the Testator, the Testator did promise to pay him fifty pound; after Verdict it was moved, that the Action would not lye against an Executor. 2. It is not averred, the Plaintiff had good cause of Action; but it was adjudged for the Plaintiff, for Suits are most presumed to be causelesse, and the promise argues, hee desired to stay the Suit; and though it did not discharge the Action, yet it was a losse of the Writ, and a delay of the Suit, which was both a benefit to the one, and a losse to the other. Hobb. 300.

Promise upon forbearance of a Suit, to give more than fees.

Executor.

Consideration.

Case 141.

Grissey's Case. Hill. 11 Jac. rott. 1866. Assumpsit was made to the Mother, in consideration that shee would give her consent to the Marriage of her Daughter with the Defendant, the Defendant promised to give her a hundred pound; Upon Assumpsit brought, it was found for the Plaintiff; it was moved in arrest of Judgement, that this was no Consideration, for there is nothing to be done on the Plaintiffs part, neither of travel, or charge, but to give a naked consent, which is not necessary to a Marriage, nor is shee her Heir, or in her power as Guardian in nature, or otherwise; But the Court held it a good Consideration, for that the Mother, by the Law of Nature, and in the affection of the Daughter, bare a special stroak to incline the Daughters mind one way or other in Marriage, and the desire of her consent, and the working of it shewes it; and therefore it shall be presumed to be of importance to have her consent, which being had at the Plaintiffs request, shall be accounted a good Consideration to ground an Assumpsit upon; adjudged for the Plaintiff. *Hobb.* page 15. pl. 20. Goldsb. and Brownl. page 18.

Promise of a hundred pound, to give consent to a Marriage.

Consideration good.

Case 142.

Johnson and Cullamots Case. Trin. 14 Jac. in B.R. Assumpsit, the Defendant being to account with the Plaintiff, pro diversis debitis, insimul computaverunt; and found upon the account to be in arrearages such a summe, and in consideratione inde, the same day the Defendant did promise to pay this at a certain day to come, at which time he failed to pay the same, and being found for the Plaintiff upon Non Assumpsit, it was moved in stay of Judgement, that the Declaration was not good, because it was not shewed the promise to be made in consideration of forbearance; but in consideratione inde: But the opinion of the whole Court was, that in consideratione inde, was a good consideration, without shewing any forbearance, for here is a duty presently to be paid, or afterwards by promise to pay this. Bulst. 3. part 208. See for this Cases 178.219.253.287.530.

Upon an *Insimul computaverunt.*

Consideration.

Declaration. Pleading.

Case

Case 143.

Consideration, a Lease to be made.

Promise of a Horse.

Consideration, not pursued.

Lea and Adams Case. Pasche. 13 Jac. in B. R. Assumpsit, in an Action upon the Case upon a promise for a Horse, the Plaintiff declared, that the Defendant made him a promise in this manner, viz. that if the Plaintiff would make him a Lease of one and twenty years, of certain Land for ten pound yearly Rent, hee, in consideration thereof, did promise to give him a Horse, and sets forth that hee made a Lease to him of the Land, and hee had not given him the Horse; it being found for the Plaintiff, it was moved in arrest of Judgement, that the Plaintiff had not entitled himself to the Action, having set forth generally, that he made him a Lease, making no mention of any Rent reserved; it was the opinion of the whole Court, that by this Lease, thus made without any Rent reserved, hee had not pursued the Contract, and so by consequence the Action was not maintainable for the Horse; it was adjudged against the Plaintiff. Bulstr. 3. part 35, 36.

Case 144.

Forbearance of a Suit.

Promise to pay.

Declaration.

Pleading.

Forbearance for a reasonable time.

Lingen and Broughtons Case, Trin. 14 Jac. in B. R. Assumpsit, the Case was, that I. S. being indebted to the Plaintiff in such a summe, for which the Plaintiff purposed to sue him; for the preventing the Suit, the Defendant came to the Plaintiff, and desired him to forbear him for such a reasonable time, and if hee did not then pay the Plaintiff, the Defendant promised to pay the same to the Plaintiff, and the Plaintiff sets forth, that upon this promise hee did forbear to sue him, and that I. S. did not pay him; it was moved, that the Declaration was not good, because it is not shewed therein how I. S. became first indebted to the Plaintiff, and also because it doth not shew certainly what time it should be that hee ought to forbear him: the opinion of the whole Court was, that the Declaration was good, without shewing how Indebitatus fuit, and also because the Court shall judge what shall be said to be a reasonable time, and it appeared to the Court, that the Plaintiff did forbear him for eight years, which is a reasonable time; Judgement was given for the Plaintiff. Bulstr. 3. part 206. See cases 55. 70.

Case 145.

Indebitatus fuit

promise to pay it.

Consideration past.

Hodges and Vavisors Case, Mich. 14 Jac. in B. R. Assumpsit, the Plaintiff delivered certain Cloths to the Defendant for so much, & sic indebitatus fuit, to him in so much, the Defendant, postea in consideratione inde, did promise to pay this a year after; upon Non Assumpsit, it was found for the Plaintiff; it was moved in stay of Judgement, that this promise should not binde him (it being said, postea in consideratione inde, hee promised) which promise is grounded upon a Consideration past, but it was resolved per Curiam, that the promise here was grounded upon a Consideration, for that the debt there remained, and no discharge could be made of it, but by payment; Judgement was given for the Plaintiff, after motion to arrest it: And there it was said by the Court, that the Plaintiff may have his choice to sue upon the first, or upon this latter premise, but not upon both; and that this is not like to the Case of Seek and Pillworth, M. 42, 43 Eliz. cited in this Case. One exchanged with another so much silver for so much gold; and hee afterwards, in consideration thereof,

thereof doth promise, &c. this is void: But in this there is a difference between a Contract, and an Assumpsit. See for this in Leonards Rep. 2. part 224, 225. And in this principal Case Justice *Haughton* did hold, that Indebitatus existens pro Merchandicis venditis, is good; and that it was agreed by the Judges. Mich. 11. Car. 1. That if one in this Case lay a request, and the Case is so; the Action will lye: But if a man, of his own head, and of courtesie, will do a thing for me; that for this the Action will not lye. Bulstr. 3. part 222.

Case 146.

Cotten and Wescots Case. Trin. 17 Jac. in B. R. Assumpsit, The Defendant was a Suitor to a young Maid, who did sojourn in the Plaintiffs house, afterwards the Defendant did marry her, and did then desire the Plaintiff that his Wife might still continue with him, to sojourn for a year longer, to which the Plaintiff agreed; and afterwards, which was about the middle of the year, the Defendant did promise, that in consideration that he would suffer his Wife to continue there as a Sojourner for the whole year, that he would pay him for the whole year, as well for that which is past, as for that which was to come; it was objected, that Assumpsit did not lye, being grounded upon a Consideration which was past. See 10 Eliz. Dyer. 272. It was adjudged for the Plaintiff. Bulstr. 3. part 187. See Case 87.

Promise for Dyet past and to come, to pay it.

Apportionment

Case 147.

Copper and Dickensons Case. Trin. 13 Jac. in B. R. Assumpsit, Goods were pawned to a man by I. S. who said in the presence of the Defendant, that if I. S. would not pay him his money, he would then sell the pawn to raise the money; whereupon the Defendant said, Keep the Goods until such a day by you, and if he do not then pay you, I will pay you the money, and take the Goods; upon this the Plaintiff kept the Goods by him without sale, and the Defendant not paying the money, the Plaintiff brought his Action: It was agreed per Curiam, that this was a good conditional Bargain, and sale of Goods, and that in this Case there was a good Consideration to raise a promise; Judgement for the Plaintiff, Bulstr. 3. part 70.

Promise to pay the debt, if he will keep a pledge delivered for it, to such a time.

Bargain and sale of goods.

Case 148.

Hill. 17 Car. 1. in B. R. Adjudged the Debte accepted of the Debtor a hundred pound, for his debt of four hundred pound, the Defendant upon payment of the money, had a general release, and afterwards promised, in consideration that he would make a general Release, he would pay him the Residue of the debt, when he should be able; the Debtor became able; and the Debte sues him for the residue, upon that promise; the Debtor pleaded the Statute of 21 Jac. of Limitation of Actions, and that was to a Bill exhibited in equity for the residue of the Debt; it was moved for a prohibition to the Court of Equity, which was denyed, 1. Because there is no remedy but in Equity; for the Assumpsit made before the Release, was discharged by the Release, and the Assumpsit made after, void for want of Consideration, the debt being released before, and it is not within the Statute of Limitation of Actions, because it is onely a trust reposed in the Debtor, that he will pay the residue when he is able.

Promise to pay a debt discharged, when able.

Assumpsit discharged.

No Consideration.

Case

Case 149.

Bill of Exchange between Merchants.

Pinchard and Fowks Case. Hill. 1654. Assumpsit, the Plaintiff declared, that the Defendant, in consideration that the Plaintiff would forbear to protest a Bill of Exchange drawn upon the Defendant, he did promise hee would pay the monyes, when he should next come to London; it was moved upon a Verdict for the Plaintiff, that there was no Consideration to ground the promise upon; for hee doth not shew that hee came to London, but sheweth that hee dyed at Plimouth: Per Curiam, the coming to London is not material, for the payment of the mony was a duty, and the monyes to be paid were received beyond Sea; and so there is a duty, and a good consideration; Judgement for the Plaintiff. Siles 416.

Case 150.

Agreement between two, to marry one another.

Promise, in consideration that one of them would release this, to pay mony.

Baker and Smiths Case. Trin. 1651. P. R. Assumpsit, the Plaintiff declared; whereas there was a speech of a Marriage, betwixt her and the Defendant, in consideration that the Plaintiff would marry the Defendant, the Defendant did promise to her, that hee would marry her, and afterwards the Defendant, in consideration that the Plaintiff would discharge the Defendant of his promise, did promise that hee would pay to the Plaintiff a thousand pound, and shee sets forth, shee did discharge the Defendant of his promise of Marriage. It was moved, that here are two promises, and it is incertain to which the Declaration doth relate. And 2. The promise is to dissolve a Contract of Marriage, which is a thing illegal, and so no consideration: But per Curiam, there is a mutual promise made by both parties, and divers Actions have of late been brought for this cause, and have been adjudged good, and the engagement to Marry, is not meerly a spiritual matter; and this Action is not to compel the Marriage upon the Contract, but to recover damages, and here is temporal losse, and therefore the Action doth well lye; and Judgement was given for the Plaintiff, and it shall be intended, that the disengagement was to the party himself, and that there is no need to expresse notice of it. Siles. 293. & 303. 304.

Mutual Promises.

Spiritual.

Case 151.

Agreement to Dye Cloths, and to have so much for them.

Bayle and Girds Case. Trin. 12 Jac. Rott. 1599. Assumpsit, The Plaintiff declared; in consideration hee should Dye divers Devonshire Kersies into several colours, namings many as amounted in the whole to be threescore, the Testator did promise to pay him a certain summe of mony, for the Dying of every several Cloth; and the Plaintiff averres, hee Died the said Cloths, amounting to sixty nine in colors, whereas indeed they were threescore, and that the mony came to nineteen pounds; found and adjudged for the Plaintiff; motion to arrest it; for it was said, it appears hee should have Dyed threescore, and hee Dyed but nine and fifty, and so the summe aforesaid not due; and also the Jury hath assessed damages, occasione debiti praedicti; whereas it should have been occasione non performationis assumptionis; but after Error brought, the Court affirmed the Judgement; for that it was first averred hee Dyed all, which appeared to be threescore, and the other was but a misnumbring: And 2. It was a debt, and a promise implied upon it. Hobb. 132.

Pleading.

Verdict.

Case

Case 152.

Lampleigh's Case. Mich. 13 Jac. in C. B. Rotr. 712. Note, it was agreed by all the Justices, that a meer voluntary courtesie will not carry a Consideration to uphold an Assumpsit; but if that courtesie be moved by Suit, or request of the party that gives the Assumpsit, it will binde; for the promise, although it follows, yet it is not naked, but couples with the Suit before, and the merits of the party which procured the Suit: And therefore in the Case there, where the Defendant requested the Plaintiff, that hee would labour, and indeavour to obtain his pardon for a felony, and the Plaintiff doth his indeavour, by riding and journeying at his own charges from London to Royston, and back again to the King, to obtain his pardon, and in consideration thereof, the Defendant doth promise to pay the Plaintiff a hundred pound, though it did not appear that hee did any thing towards the obtaining of the Defendants pardon, but riding up and down: yet the same was holden a good Consideration to bring an Assumpsit upon. Hobb. 145. See cases 4. 39. 63. 82. 84.

Nudum pactum.

Promise to pay one for his labour to get his pardon.

Case 153.

Lastlow's Case. Hill. 11 Jac. C. B. Assumpsit, the Plaintiff declared, that the Defendant sold him so many Oats, as according to the rate of sixteen shillings nine pence the Quarter, did amount to fifty two pound, to be delivered at such a time, which mony the Plaintiff promised to pay at such a time, and that the said Oats at such a rate came to ninety six Quarters, and six Bushels, which the Defendant had not delivered to him; upon Non Assumpsit, it was found for the Plaintiff; Error was brought, and Error assigned, that ninety six Quarters, and six Bushels, at the rate aforesaid, came to fifty two pound three farthings, and so no breach; but the Judgement was affirmed, because it was not certain, whether it amounted to any more; and because it was not possible in effect to mince the measure, so that it hit the just summe, & de minimis non curat Lex. Hobb. pl. 114.

Promise to deliver Oats for so much mony, promise to pay the mony.

Certainty.

Case 154.

Mich. 22 Car. 1. Assumpsit, A. promiseth B. that if B. will pay fifty pound to C. his Son, who was married to D. the Daughter of A. at such a time, that hee will pay a hundred pound to D. his Daughter at such a time, B. payes the fifty pound to C. A. fails to pay the hundred pound, B. dyes intestate, his administrator brings an Action upon the Case, upon the promise against A. and adjudged the Action maintainable, though the Administrator receive no benefit by it if hee recover.

Promise to pay mony to *I. S.* if the other shall pay mony to *I. S.*

For an Administrator.

Case 155.

Smithson and Well's Case. Mich. 24 Car. 1. B. R. In the Case of an Assumpsit it was holden per Curiam, that if one promiseth to save another harmlesse from any thing, hee that made the promise, ought to do it at his peril, without request, and the request is not material, although the promise say, upon request; but if hee be damnified, if I do recompence him upon request made, the promise is not broken. Stiles. 141.

Promise to save harmlesse.

Request needlesse.

Case 156.

Against an Executor.

Christopher and Howe's Case, Mich. 1649. It was resolved by the Court, in an Action upon the Case, upon an Assumpsit brought against an Executor, that an Executor may be charged upon a Collateral promise, if there were a breach of it in the life of the Testator. Stiles, 198.

Case 157.

Promise to pay for wares to be delivered to his Son.

Johnson's Case. Mich. 1649. B. R. The Plaintiff declared, that the Defendant, in consideration that the Plaintiff would deliver to the Defendants Son such wares as his Son should desire, did promise the Plaintiff, that hee would pay the Plaintiff for them; and averres, he delivered certain Wares to the Son, and the Defendant did refuse to pay for them; it was moved, that it doth not appear the Son of the Defendant did desire the Wares, and the Declaration ought to set forth an Actual desire. But the opinion of the Court was, that the Acceptance of the Wares was an Actual desire, and that is more than a Verbal desire; adjudged for the Plaintiff. Stiles. 163.

Request.

Case 158.

Promise for mony, to procure Cattle to be delivered.

Several promises.

Promise made to divers persons.

Vaux and Draper's Case. Hill. 1649. R. R. A. and B. brought Assumpsit against I. S. and declared, that the Defendant, in consideration of ten pound paid by the Plaintiffs to the Defendant; promised to the Plaintiffs, to procure certain Cattle of the Plaintiffs, taken from them by a third person, to be re-delivered to them such a day; and for not performance, they brought their Action; and being found for the Plaintiffs, the Defendant moved, that the Plaintiffs ought to have several Actions, and not one Joynt Action, in regard the promise upon which the Action was brought, was not one promise, but several promises made to each Plaintiff. But the better opinion of the Court was, and so the Jury found, that the promise was made to them both, and not several; and the Consideration given is entire, and cannot be divided, and there is no inconvenience in joyning in the Action in this Case: But if one had brought the Action alone, it might have bẽn questionable, and Judgement was given for the Plaintiffs. Stiles. 203.

Case 159.

Against an Administrator.

Promise upon forbearance of a causeless Suit, to pay mony

Consideration invaluable.

Rosier and Langdal's Case. Hill. 1650. B.R. Rott. 100. and Pasche 1651. Assumpsit, An Executor brought an Action upon the Case against an Administratrix, and declared, in consideration that hee would forbear Suit, till shẽ had taken out Letters of Administration, shẽ did promise to pay the Plaintiff a certain summe of mony owing to him by the Intestate; Judgement was for the Plaintiff; and upon Error brought, it was adjudged, the same was no good consideration; for that the Defendant was not liable to be sued as Administratrix, until shẽ had taken out Letters of Administration, except there were a cause depending, as here there was not; and it doth not appear that shẽ did intermeddle with the goods; nor is the Defendant compellable to take Letters of Administration, for they may be granted to the next of Kin, by the Ordinary. the Court inclined that the Judgement should be reversed: But it was adjourned.

journed. Stiles. 248. See Hil. 1655. B. R. Boyle and Scarboroughs Case, Stiles, 395. Act. &c.

Case 160, and 161.

Sharp's Case. In an Assumpsit, in consideration the Plaintiff will deliver certain Cloths that hee had made for him, the Defendant assumed to pay for them, and said not to whom; it was adjudged good, and that it shall be taken to the Plaintiff. Latchley Rep. 272.

Consideration to come to the Defendants house.

Peck and Ingram's Case. Pasche. 1651. B. R. In Assumpsit, the Plaintiff declares, that the Defendant, in consideration that shee, the Plaintiff, would leave her Fathers house, and come to the house of the Defendant at such a place, did promise unto her, that hee would marry her; and sets forth, that thereupon shee did leave her Fathers house, and did come to the Defendants house, & obtulit se in Maritagium conjungi; Upon Verdict for the Plaintiff, it was moved, that shee did not shew when shee left her Fathers house, nor that shee gave him notice of it; the question was, whether the words obtulit se, implied notice? It was said, that if the thing be to be done by the party himself, no notice ought to be; otherwise, if it be done by a stranger. Jetman, Justice, said, there is no tender of Marriage, if the other party be not there. It was adjudged for the Plaintiff. Stiles 273, and 273.

Promise to marry her.

Notice.

Pleading.

Case 162.

King against Weeden. Pasche. 1651. Banco Regis. In Arrest of Judgement upon a Verdict found for the Plaintiff, in an Action upon the Case upon an Assumpsit brought by an Administrator, two Exceptions were taken.

1. That the Plaintiff did not shew his Letters of Administration. And

Letters of Administration must be shewed

2. That there is no good Consideration set forth to ground the Assumpsit upon; for it is, that the Defendant did promise, that if the Plaintiff would forbear to take his course for the monyes, hee would pay them, which words are incertain, and hee should have said his course in Law, and not generally his course. Roll, Chief Justice, to the first answered, It is not necessary here to shew the Letters of Administration, for they are but inducements to the Action, and not the ground of it; and for the second Exception, the Consideration is certainly enough set forth, although the Latine be not very proper; therefore let the Plaintiff have his Judgement, nisi, &c. Stiles 264. See cases 55, 144.

Pleading of a Consideration.

Forbearance.

Certainty.

Case 163.

Nelson against Thompson. Trin. 1651. Banco Regis. Nelson brought an Action of the Case against Thompson, and did declare, that the Defendant, in Consideration that the Plaintiff would cease to prosecute a Suit in Law against him, did assume, and promise unto the Plaintiff, that hee would pay unto him eight pound, and the charges of Suit, which hee had been at, and for breach of this promise Actio accrevit, and sets forth his damage; to this Declaration the Defendant demurres in Law, and takes this Exception, viz. That there is no time or place set forth where, or when hee did forbear to sue the Defendant, as it ought to be, because it is a traverslable matter: But Roll, Chief Justice, answered, it is not necessary to alledge a place of a negative thing to be done, viz. to say that hee did not prosecute the Suit in such a place, or at such a time,

Promise upon stay of a Suit, to pay the Charges.

Declaration.

Pleading.

time, for hee ought to surcease prosecution in all places, and at all times: therefore let Judgement be for the Plaintiff, except better matter be shewed Friday next. Siles 140. 278.

Case 164.

Two Assumpsits

Damages entire.

Starkey against Mill, Mich. 1651. Banco Regis. Starkey brought an Action upon the Case against Mill, upon two several Assumpsits, and obtained a Verdict upon both, and entire damages are given; it was moved in Arrest of Judgement, that one of the promises was not good, because there was no Consideration to ground it upon, and so the damages being entire upon both the Assumpsits, and one failing, Judgement cannot be given; but after Judgement was given for the Plaintiff, Siles. p. 296.

Case 165.

Consideration of Marriage.

Promise to make good a Legacy.

Action by Husband and Wife.

Costrell and his Wife brought an Action upon the Case upon an Assumpsit against Theobell, Mich. 1651. Banco Regis. Siles. p. 297. and declares, that the Defendant, in consideration that the Plaintiff would marry A. that is now the Plaintiffs wife, hee assume, and promise to the Plaintiff, to make good a Legacy given unto her by her Fathers Will, and would also give her forty pounds more out of his own part given unto him out of the said Will, at her age of eighteen years, and declares further, that thereupon hee did marry her, and that the Defendant had not performed his promise, and so concludes to his damage so much; upon Non Assumpsit pleaded, and a Verdict for the Plaintiff, the Defendant moved in Arrest of Judgement, and two severs Exceptions, the chiefe, viz. against the Wife, to which the promise was not made, yet was joyned in the Action, &c. After Motion for Judgement at another time for the Plaintiff, A Nil capiat per Billam was ruled by the Court. Siles. page 314.

Case 166.

Sur Indebitatus Assumpsit.

Issue.

Pleading.

Kymlock brought an Action upon the Case upon an Indebitatus Assumpsit, against Bamfield, for making of Apparel, Mich. 1651. Banc. supr. The Defendant pleaded, that hee became bound in a Bond of threescore pound to the Plaintiff, in satisfaction of the debt, and the Plaintiff accepted of it. The Plaintiff replies, that hee did not accept it, to this replication the Defendant demurred, and shewed for cause that the Plaintiff had tendred an Issue upon the non-acceptance of the Bond, whereas it should have been that the Defendant non devenit tentus: on the other side it was said, that it is well enough, and that it is sufficient to say, non accepit, and it is not necessary to say, hee refused the Obligation, and though the replication be not good, yet the plea is also naught, and therefore no Judgement can be for the Defendant. Siles. page 309.

Case 167.

Consideration, a former debt and forbearance.

Promise to pay it.

Hume against Hinton, Mich. 1651. Banco Regis. Hume brought an Action upon the Case against Hinton, and declares, that whereas the Son of the Defendant did in his life time owe unto the Plaintiff eight pound, and dyed intestate, the Plaintiff did demand the said eight pound of the Defendant, being Mother to the Intestate, whereupon shee being satisfied of the justnesse of the debt, did assume, and promise unto the Plaintiff,

Plaintiff, that if he would stay for the mony till Michaelmas next, that then he would pay it, upon Non Assumpsit pleaded, and a Verdict found for the Plaintiff; the Defendant moved in Arrest of Judgement; afterward Judgement was given for the Plaintiff, because the Consideration and the Agreement were held both good. Stiles. page 304.

Case 168.

If I have a Capias Ellegat. against the body and goods of I. S. for fifty pound owing mee by him, which I am about to execute; and W. S. on the Defendants behalf, request mee to stay the execution of the Writ till such a day, and if I. S. this day pay mee not my fifty pounds in consideration of such stay of execution of the said Writ, and for the shillings fourpence to be given to him by mee for the renewing of the Writ, doth promise mee, that if I. S. pay not the mony at that day, he will pay it. Yelverton. 19.

Consideration to stay a Suit, and money given.

Promise to pay the debt.

Case 169.

If a man be unduly arrested upon a Warrant, so that the Arrest is not good, and he, or another for him, promise the Plaintiff, that if he will discharge him of the Arrest, he will pay ten pound upon request, it seems this is not good. Yelverton. 25. See cases 269. 272.

Consideration, to discharge one unduly arrested promise to pay mony.

Case 170.

If I request one to give credit for mee to another for two Tuns of Wine, that is to fifty pound price, and he doth so, enters into Bond with him to another for so much, and am sued, and forced to pay it for him, and I tell him of it, and hee thereupon, in consideration thereof, promise to pay mee the mony I have paid at Michaelmas next; this was adjudged a good promise and consideration, on which I may have Action.

But no Action will lye for this, I pray you trust I. S. with a hundred pound, unlesse I adde this, I will see you paid, or the like words. Yelverton. Rep. 45.

Consideration that one at my request did engage for another.

Promise to pay the mony.

Consideration without a promise.

Case 171.

If a Marriage or Engagement by Suretiship be by another at my request at one time, and after it be done, and I told of it; if I then, in consideration thereof, promise to do a thing, this will be a good consideration, albeit it be past. Yelverton. 45. See cases 139. 101.

Consideration past.

Case 172.

If one declare, that in consideration that his Wife, dum sola, &c. primo Junii, 43 Eliz. at the Defendants request, lent to him thirty pound to be paid him upon request, that the Defendant did assume to pay it to the Wife upon request, and this was adjudged a good promise and consideration: But if one deliver to I. S. a Bagge, sealed with mony, and thereupon promise upon request to deliver it, no Assumpsit will lye upon this; for he can make no benefit of this mony, as he may of mony at large. Yelverton. 50. See cases 15. 37.

Consideration, loan of mony. Promise to pay it

Consideration void. *Nudum pactum.*

Case

Case 173.

Promise upon assurance of Land, to pay mony.

If one, in consideration that I will assure to him Land, as Counsel shall advise, promise to pay me thirty pounds in hand, nine pound fourteen shillings at Midsummer, ten pound at Michaelmas, twenty pound at Christmas; this is a good promise. Bendl. 158.

Case 174.

Consideration of forbearance.

Promise to pay.

An Action upon the Case was brought in Staffordshire by Whorewood against Gybbons, how in an Account between them, the Defendant was found in Arrearages, and in consideration that the Plaintiff deferreret diem solutionis debiti prædicti per parvum tempus, the Defendant did assume to pay it, and upon Non Assumpsit pleaded, it was found for the Plaintiff, and it was alledged in Arrest of Judgement, that this was no consideration, and the opinion of the whole Court (absente Anderson) was, that insomuch as the proviso was made by him, by whom the debt was due, that it is a good consideration, and that it is a common course in Action upon the Case against him by whom the debt is due, to declare without any words, in consideration, and although that Gawdy moved, that parvum tempus may be three or four hours, or dayes, which is no consideration, yet for the cause alledged; the Court said, that they saw no cause to stay Judgement. See in this Section. Cases 55. 70. 144. 162.

Declaration.

Certainty.

Case 175.

Promise upon an Abatement of so much of a debt, to pay mony to another.

Consideration.

An Action upon the Case was brought by Richard Body, against A. and declared, that whereas Mary Raleigh was indebted to Body in fourteen pound, and the said A. was indebted to Raleigh in fifty pound, in consideration that the said K. R. allocavit eidem A. fourteen pound, & promisit ei ad exonerandum eandem A. de fourteen pound, parcel prædict. fifty pound, the Defendant did assume to pay to the said Plaintiff the said fourteen pound, and the Court was moved if this were a good consideration to binde the Defendant, and the opinion of all the Court (Anderson absente) was, that the consideration was good, for that hee was discharged of so much against Raleigh, and Raleigh might also plead payment of the fourteen pound by the hands of the Defendant.

Case 176, and 177.

Against an Executor.

Consideration for forbearance of a Debt.

Promise to pay it.

Thornton brought an Action upon an Assumpsit against Kemp, and declared, that the Testator was indebted to him in ten pound, and in consideration that the Plaintiff would give day to the Defendant, being Executor, to pay that, until Michaelmas, hee assumed to pay that, & in facto dicit, that hee hath given a day, and yet the Defendant hath not paid that: The Defendant pleaded in Barre, that post prædictam assumptionem factam, and before Michaelmas, the Plaintiff did arrest him for the same debt, and demands Judgement, and upon that the Plaintiff demurred. Gawdy, when hee hath given to him day of payment, usque ad Michaelmas, albeit hee arrest him before that time, yet if hee do not receive the mony before Michaelmas, the consideration is performed. Fenner, I deny that, for to that purpose is the giving of day of payment until Michaelmas, if in the mean time, hee may sue him. Popham,

pram, I agree with my Brother Gawdy, for inasmuch that he onely forbears the payment until Michaelmas, and doth not promise to forbear to sue him, the payment is forborn, if the money be not received.

Sharp and Kirk. One doth promise, that in consideration he will deliver such things to the Daughter of the Plaintiff, that he will pay for them: Curia, it will be good notwithstanding this mistake; and it shall be intended to be paid to the Plaintiff. Latch. Rep. 151.

Case 178.

Upon an *Insimul computassset.*

A. and B. account for Reckonings between them; B. is found a hundred pound indebted to A. and B. doth hereupon assume to pay it to A. at a certain day, and doth it not; A. brings Assumpsit upon it, Defendant pleads Non Assumpsit; found for the Plaintiff, Judgement affirmed in Error, for the Account confesseth, and the Verdict proveth the Debt. Hobb. 88.

Case 179.

Consideration to assign a Lease, promise to pay a Rent.

Carter's Case. M. 29 Eliz. C. B. Assumpsit, The Plaintiff declared, that A. was Lessee for years of Lands, the Inheritance of which was in the Plaintiffs Wife, upon which Lease a Rent was reserved; and that the Defendant, in consideration that the Plaintiff would procure A. to assign the Lease to the Defendant; promised to pay the Rent to the Plaintiff, for all the Residue of the Term: It was objected, the Action did not lye, because the Plaintiff might have had a higher remedy for the Rent, viz. an Action of Debt, or might distrain for it: But per Curiam the Action did well lye, for that upon the promise, an Action for the Rent is given to the Husband alone, whereas the Rent was not due to the Husband, but in the right of his Wife, and before it was payable upon the Land, but now it is payable to the person of the Husband: Judgement was given for the Plaintiff. Leonard. 43. See Trin. 32 Eliz. C. B. See Read and Johnsons Case, Accord.

Husband and Wife.

Case 180.

Consideration, Forbearance of a Debt.

Promise to pay it.

Incertainty.

Gill and Harewood's Case. Assumpsit, The Plaintiff declared, That the Defendant was indebted to the Plaintiff in a certain summe of money, and shewed how the Defendant, in consideration that the Plaintiff per parvum tempus deferret diem solutionis, did promise to pay, &c. Found for the Plaintiff; moved in Arrest of Judgement, that there was no consideration, for that the time limited for forbearance was incertain, and parvum tempus may be but punctum temporis: But the Exception was not allowed, for that the Debt in it self is a sufficient consideration. Pasche 29 Eliz. C. B. Leonard. 61. 155. 6.

Case 181.

Against an Executor.

Promise upon proof of the property of goods, to pay for them.

Howell and Trivaman's Case. Hill. 30 Eliz. in B. R. Assumpsit, The Plaintiff declared, that he delivered goods to the Brother of the Defendant, who made the Defendant his Executor, and died, and the Plaintiff came to the Defendant, and spake of him concerning the goods; upon which speech the Defendant promised the Plaintiff, that if the Plaintiff could prove that the goods were delivered to the Testator, he would pay the value of them to the Plaintiff, and averred the goods came to the

Testators

Testators hands: Upon Non Assumpsit; it was found and adjudged for the Plaintiff, whereupon Error was brought, and two Errors assigned; the first, that the Plaintiff had not averred, that hee had proved the delivery of the goods to the Testator, for the words of the promise are, si probare potuisset. 2. That here was not any consideration, for that the Defendant had no profit nor advantage by the bailment of the goods to the Brother of the Defendant; and also it is a thing before executed, and not depending upon the promise, nor the promise upon it, and to that purpose. Hudson's Case in B. R. was vouched, viz. The Defendant, in consideration that hee was natural Son and Administrator to the Intestate, and that the goods of his Father came to his hands, promised to pay the Debt to the Plaintiff, and it was found that no goods came to his hands, and there it was holden, that the Consideration, that hee was Administrator, and Son of the Testator, was not of any force to maintain the Action; but notwithstanding these Causes, in the principle Case, the Judgement was affirmed; and in that case it was said, that if an Action be brought upon an Assumpsit of the Testator, Judgement shall be of the goods of the Testator: But if the promise of the Executor, then of his own goods. Leonard. 93, 94. See cases 39. 180, 181. 189. 213. 237, 238. 387. 338.

Averment in Pleading.

Consideration valuable.

Case 182.

Pearle and Edward's Case. Pasche. 30 Eliz. Assumpsit, The Defendant leased Lands to the Plaintiff rendring Rent; and, after some years expired, the Lessor, in consideration that the Lessee had occupied the Land, and had paid his Rent, promised the Plaintiff to save him harmlesse against all persons, for the occupation of the Lands for the time past, and also to come. Afterwards I. S. distrained the Plaintiffs Cattle upon the Land, upon which the Plaintiff brought Assumpsit against the Defendant: it was objected, that the payment of the Rent is no consideration, for hee hath the profits of the Lands for it; and also the no consideration is past; but it was adjudged, the Action did well lye, for that the occupation, which is the consideration continues; like a gift in Frank-Marriage, after the Espousals, lyeth, and yet the Marriage is past, but the Bond continues, and here the payment of the Rent is executory every year, and if the Lessee be saved harmlesse for his occupation, hee will pay the Rent the better: Adjudged for the Plaintiff. Leonard. 102.

Consideration, that the Lessee having had Land, and paid his Rent to the Lessor.

Promise to save the Lessee harmlesse.

Consideration past, yet good.

Case 183.

Rivet and Rivet's Case. Trin. 30 Eliz. B. R. Assumpsit, The Plaintiff declared, That where the Defendant pretended that one R. made his Will, and thereby gave Legacies to the Defendant, and the Plaintiff sued in the Prerogative Court, to disprove the Will; and if hee prosecutus fuisset, hee might have disproved the Will, and so defeated the Defendant of his Legacies: That the Defendant, in consideration that the Plaintiff ultra non procederet, promised to give the Plaintiff a hundred pound, and the Plaintiff averred that hee surceased his Suit, and further declared, Licet, the Defendant ad hoc requisitus tali die: It was said, that here is not any consideration, for the Defendant hath not any means to compel the Plaintiff to surcease his Suit, and if hee once surcease his Suit, yet hee may begin again; and then for the Plaintiff to have shewed a release, or discharge of it: But it was resolved that the Action did well lye. And Trin. 28 Eliz. Rott. 523. Smith and Smith's Case

Consideration, to forbear Suit about probate of a Will.

Promise to pay mony.

Case was vouched to prove it; where in Assumpsit, upon consideration that the Plaintiff should not implead the Defendant upon a Bond, the Plaintiff had Judgement to recover, and also in the principal Case: the Request generally lyes, Licet requisitus, was well laid. Leonard. 118. Request.

Case 184.

Berisford and Goodreshes Case. Mich. 14 Jac. B. R. Assumpsit against an Executor upon a promise made by the Testator for a Marriage-portion upon a Verdict for the Plaintiff; it was adjudged for him, and affirmed in Error, and yet two Judgements were cited to have been given against it. Trin. 13 Jac. B. R. Sanders and Estarbies Case, and Herbon and Elliots Case. And therein it was held, that the Action did well lye against the Executor upon the Assumpsit of the Testator: And that no Notice was requisite to be given of the said Marriage, although part of the mony were to be paid upon the Marriage-day, for the promise makes it a debt which still continues: And it was resolved, that albeit the mony were to be paid after the death of the Testator, yet it is binding and actionable. Bulstr. 3. 235. 44 Eliz. B. R. Hodges and Warelyes Case. Trin. 7 Jac. B. R. Breadly and Cobbs Case. Against an Executor, upon the promise of the Testator, for a Marriage-portion. Notice.

And the like Case was between Alfred and Blackamore. Trin. 1 Car. 1. The Father promised to pay the Marriage-portion ad diem Maritagii, or infra decem dies post Maritagium: And it was adjudged for the Plaintiff, and agreed, that no Notice was to be given, the promise made by the Father, it will be presumed hee had notice; and there the difference is when where the payment is to be made to the party, and where to a stranger upon Request. Bulstr. 3. 326. See Case in this Section. 73.

Case 185.

Lane and Mallory in the Exchequer Chamber. Pasche. 11 Jac. Assumpsit, That whereas A. owes mee two hundred pound, and C. and D. are bound to A. by two Statutes of a hundred pound a peece; and hee delivered those Statutes to mee, to the intent I may be satisfied my two hundred pound, and A. being dead, and E. his Son pretending to be his Executor, in consideration that I will deliver him these two Statutes at his request, hee doth promise to pay mee fifty pound at one day, and fifty pound at another day: It was adjudged and affirmed in Error, that the Consideration was good and valuable. Hobb. Rep. pl. 6. Consideration, to deliver back to me Statutes delivered for security of mony. Promise to pay the Debt.

Case 186.

Smith and Hitchcock's Case. Trin. 35 Eliz. B. R. Assumpsit, where the Plaintiff declared, the Defendant was indebted to him, 19 Maii, 29 Eliz. The Defendant, in consideration that the Plaintiff would forbear to sue him until such a day after, promised at the said day to pay the debt: The Defendant pleaded, that 29 Maii, 29 Eliz. hee was indebted to the Plaintiff in the said summe, for assurance of which afterwards, hee acknowledged a Statute to the Plaintiff, upon which hee had execution, and levied the mony absque hoc, that hee was indebted to the Plaintiff, antea vel post, the said day aliquo modo. It was holden by the Court, that the cause of the Action is the assumption, and there the consideration is not traversable, and always the ground of the Action is traversable, and the Assumpsit in this case, is the ground of Action, and not the debt; Judgment was for the Plaintiff. Leonard. 251, 253. Promise, upon forbearance of a debt, to pay it. Statute entred into for debt upon an Assumpsit. Pleading.

Case 187.

Fowke and Boyle. Mich. 1652. B. R. It was adjudged, that for a deceit in a Contract, as for selling false Bills of publick Faith; this Action will lye. Stiles 343. Deceit.

Case 188.

Consideration, Lease for years, and promise to be saved harmless from incumbrances. Promise to pay mony.

Leigh and Goyer. M. 15. Jac. B. R. Assumpsit, whereas upon the 24 June, 12 Jac. at D. the Defendant demised to the Plaintiff a Close, called the Leet, for two years, in consideration whereof, the Plaintiff, adtunc & ibidem, assumed to pay for that Lease six and twenty pound; and that the Defendant adtunc & ibidem thereupon promised to discharge and save him harmlesse, from all charges, troubles, and incumbrances; and alledges in facto, that hee had not discharged him of all charges and incumbrances; For one Mary Everard, 7 August, 12 Jac. distrained in the said Close, four of his Kine, for a summe of mony, for which the said Close, at the time of the distresse, was lawfully charged, and liable thereto, and the said Kine impounded, and detained, until hee was inforced to pay the said mony; after Verdict for the Plaintiff, upon Non Assumpsit pleaded, it was moved in Arrest of Judgement, that the Declaration was not good; because hee doth not shew that there was any charge before was, nor by whom granted: And it might be charged by the Plaintiff himself after the said Lease made, and therefore it is no expresse charge upon this promise; and for this Cause it was held to be ill by all the Court; wherefore it was adjudged for the Defendant. Croo. 2. part 444.

Declaration.

Pleading.

Case 189.

Consideration a Debt past. Promise to pay it by so much a month.

A. is in debt to B. in four pound lent, A. assumes to pay the said four pound by five shillings per month, after A. makes default of payment the first month; the Plaintiff declares upon this Assumpsit, that the Defendant had not paid him the said four pound, nor any part thereof, to the damage of the Plaintiff six pound: The Defendant pleads Non Assumpsit found against him, damages given four pound, adjudged and affirmed in a Writ of Error; for the Jury in this Case, where an Action was brought before all the Months expired after the Assumpsit, hath relection to finde the whole summe in damages, or for the time of non-payment, and if the Verdict be for the whole summe, and Judgement thereupon, it shall be a Barre in another Action upon the said Assumpsit, for default of payment of the said five shillings any month after; in this Case the Plaintiff may declare for damages, as in truth it is, and upon every default shall have a new Action upon the Case, the Plaintiff hath Election otherwise in an Action of debt upon a Contract, or Bill to pay at several daies, where the Contract or Bill is for the whole summe distributed to several payments at several times. The Assumpsit in the principal Case is in nature of a Covenant, judged and affirmed in a Writ of Error, the Venire facias out of Southwerk, where it ought to be Southwark, yet well enough. Jenkins 233. Case 68. Beckwick and Nol. Croo. 2. part 504.

Damages for the whole. Promise to pay a debt at several daies.

Case 190.

Consideration to deliver a House. Promise to pay mony. Consideration not valuable.

Parker and Long. M. 1 Car. B. In an Action upon the Case, the Declaration was, that whereas the Plaintiff was possessed, and in possession of such a House, in consideration that hee would deliver the possession thereof to the Defendant, the Defendant promised to pay five pound, and sheweth how hee had delivered it. Rolls moved in arrest of Judgement, that it was not shewed that he was lawfully possessed, or what estate hee had, and therefore it is no Consideration, but it seemed to

be

hee good, for if hee had illegal possession, yet to put the Defendant in possession, is a good consideration, and it was adjourned. Bendl. 151.

Case 191.

Tyler and Leonard. M. 1 Car. 1. Error upon a Judgement in B.R. in an Action upon the Case, that whereas Tyler was in debt to Leonard in twenty pound for Beer, decimo Maii, 20 Jac. eodem die & anno hee promised to pay this. Serjeant Bridgman assigned for Error, that it is not said, sic indebitat. existens. 2. Nor saith, in consideratione inde: But the Judgement was affirmed, first it shall be intended the same day, Bendl. 157. Promise to pay a debt before due.

Case 192.

Richard Bartlet brought an Action upon the Case against Tho. Bartlet, and hee declared upon an Account, and shewed that the Defendant was found in arrearages in twenty pound, which hee promised to pay when hee should be requested, and now the Plaintiff had not laid any day or place of request in his Declaration; and Ashley moved in arrest of Judgement, that the Declaration is not good, for the request is also part of the promise: But Hobbert, Chief Justice, said, that when a man brings an Action upon the Case for a thing which was originally a debt, the Plaintiff need not lay any time or place of the request, but when the Action is brought for a Collateral thing, there hee ought to lay a day and place of the request, and so it was adjudged accordingly in the same Case. Winch. 2. Upon an Account. Request. Declaration.

Case 193.

Potter and Turner. P. 19 Jac. B.R. A. was indebted to B. in twenty pound, and C. was indebted to A. thirty pound, and A. in satisfaction of the debt which hee owed to B. assigned the debt of thirty pound, which C. owed to him, and made a Letter of Attorney to sue in his name; A. and B. acquainted C. with this Agreement, and C. promised to B. in consideration that hee will forbear till such a day, that hee will pay him the mony; and upon this promise hee brought the Action against C. and hee pleaded Non Assumpsit, and it was found for the Plaintiff: And it was moved in Arrest of Judgement, that the consideration was not sufficient, according to Banes Case. Cook. 9. If Executors, who had not Assets, promise to pay a debt of the Testator; this shall not bind them, because they who made the promise were not chargeable; but on the other side, it was said by Whitwick, that this was a good consideration, for the assignment of that debt was lawful, and no maintenance at all, as appears by 15 H. 7. 8. And a recovery by B. against C. is a good Plea in Barre, in an Action brought by A. against C. But Doderidges, Houghton, and Chamberlin onely present, to the contrary; for B. here had onely an Authority to sue; and this is at all times countermandable by A. As if I deliver goods to my Servant to deliver over to I. S. and I. S. promise my Servant, that in consideration hee will deliver them to him, he will give him so much mony; this is no consideration, except that they are delivered accordingly; for this is onely an Authority to deliver goods which are alwaies countermandable by mee: And Judgement was entred for the Defendant. Winch. 7. See cases 181. 176, 174. 180. 167. 136. Assignment of one debt, to satisfie another, and a Letter of Attorney to sue. Consideration of forbearance of it. Promise to pay it. Consideration not valuable. Authority countermandable.

Case 194.

Promise upon forbearance to sue for a debt, to pay it.

Mayes and Mayes. T. 19 Jac. brought an Action upon the Case against Sir Isaac Sidley, upon a promise, and shewed, that one named Holdish was indebted to the Testator of the Plaintiffs in twelve pound upon a Bond which became due, and that the Defendant, in consideration that the Plaintiffs would forbear to prosecute a Suit upon the same Obligation, hee promised to pay that; and the Plaintiffs shewed that they had forborn him till such a day, &c. and upon Non Assumpsit pleaded, it was found for the Plaintiffs, and now it was moved in Arrest of Judgement by Kitcham Serjeant of the King, that this Declaration is not good, for this forbearance ought to be for ever, and not a temporary forbearance onely, for the Defendant by his promise had made the debt his own, as if the Assumpsit and promise had been to forbear to come to my house; this ought to be a perpetual forbearance; and here the assumption of the Defendant amounts to a release in Law to the principal, and yet hee agrees, if this had been general, that hee had forborn, and had not shewed hee had forborn till such a day, the Declaration had been good. Hobert, if the promise had been to forbear till such a day; there hee may sue the Debtee if hee do not pay it the day; and it was adjourned. Winch. 22. See cases 55. 144. 162. 174.

Forbearance to sue, how to be taken.

Case 195.

Consideration, to keep a prisoner in my house

Promise to save mee harmlesse.

Battersey. M. 2 Jac. C. B. An Action upon the Case brought against one Hordecre upon an Assumpsit, and declared that the Defendant had arrested one Battersey, by virtue of a Commission of Rebellion out of the Cinque-Ports, and that the Plaintiff keeping a Common Inne, the Defendant brought the said Battersey to his Inne, and requested the Plaintiff to keep him a day and a night, and promised, in consideration thereupon, that hee would save him harmlesse; and hee shewed that hee kept the prisoner accordingly, and that the said Battersey brought an Action of false imprisonment against him, and recovered against him, upon which the Action accrewed: And upon Non Assumpsit pleaded, it was found for the Plaintiff, and now was moved in arrest of Judgement, because hee had not shewed that the said Battersey was lawfully arrested and imprisoned; and then if a man will without cause arrest a man, and promise in this Case, no Action will lye, for it is no consideration, because the imprisonment is unlawful; but Hobert, Chief Justice; Hutton and Winch contrary; for be the imprisonment lawful, or not lawful, hee might not take notice of that: As if I request another man to enter into another mans ground, and in my name to drive out the beasts, and impound them, and promise to save him harmlesse; this is a good Assumpsit, and yet the Act is forcious; but by Hutton, where the Act appears in it self to be unlawful, there it is otherwise; as if I request you to beat another, and promise to save you harmlesse; this Assumpsit is not good, for the Act appears in it self to be unlawful, but otherwise it is as in our Case, when the Act stands indifferent: But Hobert said, it may be there is a difference between a publick Officer, and a private man, for if the Sheriff arrest a man unlawfully, and promise as before; this is a good Assumpsit, but perchance otherwise of a private man, as here; but in the principal Case the Defendant had pleaded Non Assumpsit, and this implies a lawful imprisonment; for otherwise the Defendant might have given the unlawful imprisonment in evidence and Judgement was commanded to be entred for the Plaintiff. Winch. 48.

Consideration good.

Consideration unlawful.

Case

Case 196.

Brand and Lisley. M. 7 Jac. B. R. Assumpsit, The Plaintiff declares, that whereas one Williams was indebted to him in a hundred pound, and for satisfaction of this debt, delivered to the Defendant divers goods in specie, amounting to the value of the Debt, to satisfie the Plaintiff the said hundred pound: And whereas the Plaintiff came to the Defendant, and required him to satisfie the said hundred pound, with the goods in his hands, the Defendant, in consideration that the Plaintiff would forbear him for a certain time, assumed, and promised at such a day to pay and satisfie the debt. The Plaintiff alledges in facto, that hee forbore the Defendant accordingly, yet hath hee not paid the hundred pound, though such a day required, &c. And upon Non Assumpsit pleaded, it was found for the Plaintiff, and shewn in arrest of Judgement, there was no consideration on the part of the Defendant for the delivery of goods to him by Williams, hee hath no interest in the goods, no profit by them, and so no benefit at all; But was adjudged for the Plaintiff; for by the delivery of goods to the Defendant to satisfie the Plaintiff the hundred pound, the Plaintiff hath interest and propriety in the goods, and then by the Plaintiffs forbearance of the Defendant for some time, the goods being due to the Plaintiff presently, the Defendant had benefit, & quid pro quo. Yelverton of Counsel with the Defendant. Yelverton 184.

Consideration, the delivery of goods, to satisfie a debt.

Promise by the Baylee upon forbearance, to pay it.

Consideration valuable.

Case 197.

Brenly and Todd. M. 7 Jac. B. R. Assumpsit, The Plaintiff declares, that in consideration the Plaintiff, at the request of the Defendant, would take to Wife Ja. S. his Servant, the Defendant assumed to pay to the Plaintiff fifty pound upon request; the Plaintiff shewed in facto, that hee, trusting to the promise of the Defendant, married I. S. such a day, yet had not the Defendant paid the fifty pound, though required such a day, to the damage, &c. And upon Non Assumpsit pleaded, was found for the Plaintiff, and alledged in arrest of Judgement, that the Plaintiff ought to give notice to the Defendant of the Marriage, because the Defendant is a stranger to it by presumption, and cannot have notice; but adjudged for the Plaintiff, and that notice is not necessary, for the Defendant hath bound himself by his promise, as strong as by his bond; and also the notice is not any parcel of the promise, and therefore need not be alledged; and was never seen that notice was inserted in the Declaration, for at his peril hee ought to take notice. Yelverton 168. and Noy. 140.

Promise to pay mony upon a Marriage.

Notice.

Case 198.

M. 44 Eliz. B. R. Assumpsit. H. Goring was indebted to Smith in two hundred and five pound upon a simple Contract: Smith made I. Goring his Executor, and died, I. Goring the Executor agreed, and was content to take of H. Goring for the two hundred and five pound, one hundred and fifty pound, and also agree to take the hundred and fifty pound by twenty pound per annum; in consideration of which, H. Goring assumes, and promises to pay to the said I. Goring the said hundred and fifty pound, by twenty pound per annum; and for non performance of the promise, I. Goring brought his Assumpsit against H. Goring; and upon Non Assumpsit pleaded, was found against H. Goring, and adjudged a good

For an Executor.

Consideration, to take lesse than ones debt, promise to pay it.

good consideration, notwithstanding it was not alledged that the Defendant was discharged of the two hundred and five pound, for that if he were charged therewith, hee might have an Assumpsit against the Plaintiff upon his promise and agreement to take a hundred and fifty pound for the two hundred and five pound. Yelverton, 32.

Case 199.

Consideration, that hee was content to take ten pound for trespasses, and to discharge him of it, and to let him take his goods of the house, &c. Promise to pay the ten pound.

Pleading. Declaration.

Leveret and Rivet. M. 16 Jac. B. R. Assumpsit, whereas one Tho. Ogle had acknowledged himself to be indebted to the Plaintiff in ten pound for divers trespasses done unto him, which ten pound the Plaintiff at the Defendants request was contented to accept of it: The Defendant, in consideration that the Plaintiff, at the Defendants request, would acquit and discharge the said Thomas Ogle of the said Debt, and permit him to carry out of the Plaintiffs house, certain goods of the said Thomas Ogles, which were then there, assumed and promised the Plaintiff to pay unto him the said ten pound at such a day; and alledges in facto, that hee acquitted and discharged the said Thomas Ogle of the said ten pound debt, and suffered him to carry away his said goods out of his house, and that the Defendant had not paid the said ten pound to the Plaintiff according to his promise: The Defendant pleaded Non Assumpsit, and found against him: And it was now moved in arrest of Judgement, that the Declaration was not good, because hee doth not shew how he acquitted the said Thomas Ogle, for it cannot be without deed, which ought to be particularly shewn: And although that the consideration, to suffer him to carry out of the Plaintiffs house the said goods, had been a sufficient consideration, and was well alledged, if it had been by it self; yet when it is joyned with another consideration, which is good, if it had been well alledged to have been performed, it not being well alledged to have been performed, it makes the whole Declaration to be ill; and of that opinion was the Court; wherefore it was adjudged for the Defendant. Croo. 2. part 503.

Two parts of the consideration.

Case 200.

Consideration to buy such Land, and give so much for it. promise to pay mony upon request.

Request.

Hill and Wade. H. 16 Jac. B. R. Assumpsit, in consideration that he would buy such Land of the Defendant, and pay unto him forty pound for it; the Defendant promised to pay unto the Plaintiff nine pound, which I. S. owed unto the Plaintiff, when he should be thereunto required: And alledgeth in facto, that hee bought the Land, and paid forty pound for it, and that the Defendant, licet sæpius requisitus, had not paid the nine pound. After verdict upon Non Assumpsit pleaded, and found for the Plaintiff; it was moved in arrest of Judgement, that the Declaration was not good, because there was neither time nor place alledged of the request: And although Gwin for the Plaintiff often times moved, that it was not material, because the Defendant pleaded Non Assumpsit, and so hath not taken advantage thereof; the Court resolved, that for as much as it is a stranger debt, and was no duty by the Defendant before the promise, nor payable, but upon request, and so no breach, until request be made; therefore to enable the Plaintiff to the Action, an expresse request ought to have been alledged, and a sæpius requisitus will not serve; and Houghton, Justice, took this difference, where a request is upon a duty, as if I sell an Horse for five pound to be paid upon request, there a licet sæpius requisitus is sufficient, and where it is upon a Collateral matter, for there he ought actually to alledge a request, although it

it be joyned upon the Assumpsit; and this difference was affirmed in Greggs Case in a Writ of Error: And so the opinion of the Court was against the Plaintiff, & adjournatur, and afterwards adjudged for the Defendant. Croo. 2. part 523. See Cases 120. 125. 155.

Case 261.

A. declares against B. in an Assumpsit, that whereas A. had sold to B. certain Cloths for three hundred seventy pound, the one moyety to be paid within fourteen daies, which was paid, and the other moyety at the end of three months after; at the end of these three months, the other moyety was not paid, whereupon B. assumed to A. if hee would accept of a Bill from him of a hundred thirty seven pound to be paid to him one month after, which the Plaintiff did accept, and that at the time of the payment of the said hundred thirty seven pound, B. did not pay it, nor the eighty four pound residue of the said other moyety of the said summe of three hundred seventy pound: The Defendant pleaded Non Assumpsit found against him; the Plaintiff has Judgement affirmed in Error, although entire damages were assessed, although the Bill was accepted, although no expresse Assumpsit was for the eighty four pound, although upon those two Assumpsits the Defendant pleaded Non Assumpsit generally, although they were joyned in one Action, where a Bill is made for one summe; and hereupon an Assumpsit is brought upon an Assumpsit made after the Bill, made for the summe in the Bill, both not lye, and an Assumpsit gives onely damages and costs, and varies from a Judgement for debt, which gives the debt with damages and costs; where the debt is due, and an Assumpsit to make a Bill, recovery upon such an Assumpsit is a Bar to the Suit upon the Bill; in this case upon the sale of the Cloths for three hundred seventy pound, although the moyety was paid, and a Bill for one hundred thirty seven pound, yet eighty four pound remains of the said three hundred seventy pound not paid, and an Assumpsit lyes for this, although it be but part of the said three hundred seventy pound, where the Court held, that the moyety of this three hundred seventy pound only was paid, and this Assumpsit was an expresse for a hundred thirty seven pound, and implied Assumpsit for the eighty four pound upon the sale, Non Assumpsit extends to those two Assumpsits, and entire damages are well given, if the Bill and the Assumpsit for the three hundred and seventy pound were payable at the same day, and were made at one time, the Bill determines the Assumpsit. Jenkins. 331. Case 82. Croo. 544. Heath and Daintley.

Consideration, for Cloth sold for mony, part in hand, and part at a day to come, and that he would then accept a Bill for part of the mony.

Promise to give the Bill.

Two Assumpsits.

Entire damages.

Case 262.

Austin and Bewly. M. 17 Jac. B. R. Error of Judgement was given in Rochester in an Assumpsit, where the Plaintiff declares, that the Defendant being indebted to him in fifteen pound, in consideration the Plaintiff would give time unto him for the payment, till the first day of Easter Term, promised to pay, &c. And alledgeth in facto, that hee gave day for the payment, &c. and that hee has not paid; upon Non Assumpsit pleaded, and found for the Plaintiff, and Judgement accordingly; Error was assigned, for that it was not shewn how the debt accrewed; for it was said that a general Indebitatus was not sufficient where it is the ground of the Action; as to say, whereas hee was indebted unto him in such a summe, hee promised to pay; there hee ought to shew how hee was indebted; but where it is but an inducement to the Action,

Indebitatus Assumpsit.

Declaration.

Pleading.

as

as it is here, in consideration that hee should forbear the debt until such a day (for that they are agreed upon the debt, and so it is but a Collateral promise) it is good enough, without shewing how. Secondly, It was objected to be erroneous, because it was not shewn when Easter Term began; sed non allocatur, for it is well known to the Court, and the Action is conceived after the end of the Term; wherefore the Judgement was affirmed. Croo. 2. part. 548.

Case 203.

Consideration of Marriage, promise to leave her worth five hundred pound.

Against an Executor.

Assumpsit determined.

Clark and Thomson. P. 18 Jac. B.R. Assumpsit; In consideration the Plaintiff would marry the Testator, hee promised hee would leave her worth five hundred pound, and alledgeth in facto, that hee did not leave her worth five hundred pound. Exception was taken in arrest of Judgement, after Verdict for the Plaintiff, that an Assumpsit lyes not against an Executor, upon a Collateral promise of the Testator; and that this personal Contract by the Enter-marriage, was determined, as if a release had been made; or, as where the Debtor takes the debtee to feme, the debt is determined, sed non allocatur; for it never was a duty in the life of the Baron, nor ever could be released by him; wherefore it was adjudged for the Plaintiff. Note, this Judgement was affirmed in a Writ of Error in the Exchequer, and Justice Winch shewed, that such a Case was in B. C. betwixt Smith and Stafford, where the Baron promised to the Feme before Marriage, that hee would leave her worth a hundred pounds and three Justices held, the Action well lay against the Executor of the Baron. Croo. 2. part 571. & 577.

Case 204.

Promise, for mony, to assure Land, as Counsel shall advise.

How it shall be taken.

Coles and Kinder. P. 18 Jac. B.R. Assumpsit, In consideration the Plaintiff would pay unto the Defendant the summe of twenty pound, hee promised to assure such Land by such reasonable assurance, as by the Plaintiff should be advised and required, who devised and required an Indenture of Feoffment, with covenant to discharge and save him harmless from all incumbrances made by the Defendant, and for further assurance upon request to be made within such a time; and for not sealing this Assurance, the Action was brought; And it was thereupon demurred, for it was said, although hee bound to make assurance, yet hee is not to be bound with any Covenants, and therefore hee is not bound to seal that Assurance: And of that opinion was the whole Court, that although these Covenants are ordinary and reasonable, yet the Agreement not being to make it with reasonable Covenants, but onely reasonable Assurance, hee is not bound to seal it, for it is not any part of the Assurance; and the Assurance may be without any Covenants: whereupon it was held, that the breach was not well assigned, and the Declaration was not good: But they would advise thereof; and afterwards being moved again, they all held their former opinion, that this Assurance, with these Covenants, was not within the promise: wherefore the breach thereof was ill assigned, and adjudged it for the Plaintiff. Croo. 2. part 571.

Consideration, to forbear to sue, till he had Execution upon a Judgement, &c.

Case 205.

Davies and Warner. M. 18 Jac. B.R. Assumpsit, whereas the Defendants Testator was indebted unto him in three and thirty pound, that in

in consideration the Plaintiff would forbear to sue the Defendant, till hee had execution upon such a Judgement, the Defendant promised to pay the said thirty three pound upon request, after hee had obtained Execution of such a Judgement; and alledgeth in facto, that hee had obtained Execution of the said Judgement, & licet requisitus, &c. such a day had not paid, upon Non Assumpsit pleaded, and found for the Plaintiff, it was alledged in arrest of Judgement, that it doth not appear how hee was indebted, nor that hee had Assets, otherwise there is no cause to binde him; sed non allocatur; for if the Action were founded upon the debt, then hee ought to shew how hee was indebted: But it is grounded upon his own promise, and it shall be intended hee was indebted, otherwise hee would not assume; wherefore it was adjudged for the Plaintiff. Croo. 2. part 594.

Promise to pay upon request. Pleading.

Case 206.

Broad and Jollise. M. 18 Jac. B. R. Assumpsit, whereas the Defendant was a Mercer, and kept a Shop at Newport, in the Isle of Wight, and had his Shop furnished with divers old and sullied Wares; and the Plaintiff had a Shop there, furnished with new and fresh Wares: In consideration the Plaintiff would buy of him all his said Wares in the said Shop, and would pay for them such prizes as hee paid for them when hee first bought them, that hee assumed hee would not then any longer keep a Mercers Shop in Newport: And alledges in facto, that hee bought of him all his said Wares, and paid him three hundred pound for them, being the price which hee had paid for the said Wares when hee bought them, whereas in truth they were not then worth a hundred pound: And that the Defendant, contrary to his promise, kept his said Shop, and furnished it with new and fresh Wares, &c. to the Plaintiffs damage five hundred pound; after Non Assumpsit pleaded, and Verdict for the Plaintiff to his damage of forty pound; it was moved in arrest of Judgement, that this Assumpsit is against Law, to restrain any to use their lawful Trade: And for that purpose was cited 2 H. 5. 5. where an Obligation, that one shall not use the Trade of a Dyer, was held to be void: And of that opinion was Houghton, Justice, for the reason above mentioned: But all the other Justices held, that it was a good Assumpsit, for it is voluntary, and upon a valuable consideration, and may restrain himself that hee shall not use his Trade in such a particular place; for hee who gives that consideration, expects the benefit of his Customers: And it is usual here in London, for one to let his Shop and Wares to his Servant, when hee is out of his Apprentiship; as also to covenant, that hee shall not use that Trade in such a Shop, or such a Street: So for a valuable consideration, and voluntarily one may agree that hee will not use his Trade; for volenti non fit injuria: But it is not like to the Case in 2 H. 5. before cited; for there it is alledged, that hee was compelled to enter into such a Bond, it being an offence, for which Full tam, he would have committed him, had hee been there; yet there the Issue is taken, that hee did not use the Trade of a Dyer in the said Village, which proves, that the Defendant did not demurre thereupon, but the Bond was allowed good: But here it is upon a good consideration, viz. that hee should pay three hundred pound for Wares, which were not worth a hundred and fifty pound, for which hee made the said promise, and is strong enough against himself. And Montague, Chief Justice, cited the Case in 13 H. 7. If a Feoffment be made upon condition that hee shall not alien, it is a void condition, for it is against Law: Yet a Covenant

Consideration to buy and pay so much for his Wares in his Shop.

Promise not to keep a Mercers Shop in N.

Consideration against Law.

Assumpsit against Law.

nant that hee shall not alien, is good; wherefore it was adjudged for the Plaintiff. And in M. 19 Jac. was affirmed in a Writ of Error before all the Justices and Barons of the Exchequer, for they held, that one may voluntarily give over his Trade, and is not compellable to use it, especially in one certain place; and therefore he may upon good consideration agree, that hee will not use it within such a Village, and upon the matter, it is but the selling of his Customs, and leaving another to gain it; and it was said, that a prescription to restrain one from using a Trade in such a place, is good. P. 18 Jac. betwixt Bragg and Tanner, Assumpsit for ten shillings, hee promised to pay a hundred pound, if hee thereafterward kept any Drapers Shop in Newgate-Market; adjudged good, and the Plaintiff recovered. Croo. 2. part. 596. See case 115.

Case 207.

Promise to pay forty shillings to arrest one upon an Outlawry.

Bath brought an Action upon the Case against Salter, and declares, that the Defendant had prosecuted one Green to an Outlary for thirty pounds, and has sued Cap. Utlagatum against him in Trinity Term; 18 Jac. directed to the Sheriff of Salop: The Defendant promised to pay him forty shillings: If hee would arrest Green by Warrant of the Sheriff, and sheweth that the Sheriff made a Warrant, and hee arrested him, and demands forty shillings: And upon Non Assumpsit pleaded, Verdict was found for the Plaintiff: It was moved in arrest of Judgement, that there was no consideration, being against 23 H. 6. 10. for Extortion, which, vide M. 22 Jac. a Judgement for Debt, by Crew, Chief Justice, and the three others, which is void by the Common Law, shall take no advantage of 29 Eliz. C. 4. for it seems this is not within this Statute, because it is not an Extent or Execution, but is void by Law, because the Sheriff ought to do this de jure; and although the Plaintiff was not Bayliff at that time, yet when hee made the arrest, he was, and there is not any difference between the Bayliff and the Sheriff himself, and would be the way to bring in much Extortion. Dodridge, mutata opinione, held also, that the Action doth not lye, but hee, and Jones held, that if the Plaintiff promised to one which is not Bayliff, that if hee will go to the Sheriff, and minde him of the business, and procure him to make an Arrest, the Action lyeth, for hee is not Bayliff, and is for his labour; so if hee will be present to assist the Sheriff: But my Lord Crew, and afterwards Serjeant Crew, the Kings Serjeant, held all void. Bendl. 147.

Consideration against Law.

Case 208.

To assure Land upon a Marriage.

Sir Arthur Gorge, and Sir Robert Lane. T. 21 Jac. In an Action upon the Case upon a promise, in consideration of two thousand pound, with his Daughter to assure Land of 4000 pounds per annum ultra reprisas in Angl. such as Sir R. Crew, and Sir H. Yelverton should advise, and hee pleads that hee gave information of this Land, &c. Judgement for the Plaintiff, because it is not shewn of what estate, but saith of his freehold, and it may be an Estate; Also it is not shewn of what Land, nor where it lyes, also there is not shewn the place where hee informed them. Bendl. 125.

Case 209.

By an Administrator.

Hancock, Administrator of I. S. Plaintiff in an Action upon the Case, upon

upon promise, that in consideration that the Testator of the Plaintiff would melt the old Lead of a Church in Hampshire, and cover the Church with new Lead, that the Defendant would pay as much as it was worth. And alledgeth, that he has melted the old Lead, and at London, in the Parish of St. Mary, in the Ward of Cheap, has covered the Church, and that it was worth twenty pound, and alledges Administration to be committed at London, in the Parish, &c. And Verdict given for the Plaintiff. Holt moved in arrest of Judgement. 1. Because the Plaintiff alledges, that at London the Testator has covered the Church, which is impossible, for it appears that the Church is in Hampshire. 7 Eli. 2. 132. Sir Maurice Dennis Case. A Lease for life was alledged to be made at Bath of Land in D. adjudged to be impossible; and therefore the Judgement was given against the Abbomant. 10 El. D. 8. 270. Debt upon an Obligation with condition to perform Covenants, the issue was, if the Defendant fuit verus possessor terræ in Com. Bedd. ought to be laid in Com. Bedf. for it is local.

To pay for work to be done.

Impossible.

Judgement for the Defendant, quod querens nil capiat per Billam, for the Plaintiff intitles himself to the Action, by a thing impossible, that a man at London can cover a house in Hampshire, and this may be traverse, and cannot be tryed at London. But for the other point the Court was clear, that the Bishop, &c. out of his Diocesse may grant Administration of things arising in his Diocesse, for some times in Parliament time, they are all out of their Diocesses. Bendl. 229.

Consideration impossible.

Case 210.

Harwood and Wells. M. 1 Car. 1. In Error upon a Judgement in B. in an Action upon the Case, upon a promise, the Declaration was, that in consideration that the Plaintiff would assure to the Defendant a House in Tubury, as by Counsel should be advised; the Defendant 8 April 21 Jac. promised to pay thirty pound in manner following, viz. five shillings in hand, nine pound fifteen shillings at Midsummer, ten pound at Michaelmas. And the Original Writ was dated 18 Sept. which was before Michaelmas, which was so certified, and Judgement reversed, because it cannot be sued before the day, and the damages were intire. Bendl. 158.

For a house, to be assured to pay money.

Suit for a Debt before it be due

Case 211.

Jackson brought an Action upon the Case upon a promise to pay money to the Testator of the Plaintiff, and upon Non Assumpsit, the Verdict was found for the Plaintiff, and it was moved in arrest of Judgement. 1. Because there was not any request laid by the Plaintiff, and this ought to be in the detinet, and is not detention before demand. 2. He doth not say that the money was delivered to the Defendant to the use of the Testator, for if it were to the use of another, he cannot countermand it, the Judgement is good. 1. Because it is debt, and not a thing Collateral. 2. It shall be intended so, seeing the contrary is not shewn. Bendl. 172.

By an Executor

Request.

Case 212.

Hungerford and Haveland. T. 2 Car. 1. In an Action upon the Case the Plaintiff declares, quod cum infra Manerium de D. talis habeatur consuetudo quod super quamlibet alienationem le vendee consuevit solvere Domino redditum unius anni nomine Relief. Et cum quidam Tho. Smith,

Consideration, forbearance to sue for a relief; and make it appear it is due.

Promise to pay it.

finisse, &c. in fede, &c. Et eadem tenementa tenuit, tenet, tenere debet de Manerio prædicto per fidelitatem, & 5s. redditum & servitium inde debitum, vel secundum consuetudinem. And the said Smith did the pecunia to the Defendant, whereby five shillings was due to the Plaintiff for relief, the Defendant assumes to the Plaintiff, that if he would forbear to sue the Defendant for the said relief, and the Plaintiff would make his answer to A. B. the Brothers of the Defendant, that the said relief is due unto the Plaintiff, then the Defendant would pay it, &c. Et idem querens tenet answer to the said A. & B. per ostensionem Rotulorum & Recordorum Curiæ Manerii prædicti, that the said relief was due to him, yet the Defendant hath not paid it, &c. and because the Defendant nihil in Barrain, &c. Judgement was given against him in B. C. and affirmed in a Writ of Error. Bendl. 181. See Cases 39. 181.

Case 213.

Miscounting.

Risley and Hames, H. 2 Car. 1. brought an Action upon promise, and declares of divers Contracts, and alledges particular summes, in toto stringunt ad forty five pounds, and concludes for the damage of fifty pounds, and upon Non Assumpsit Verdict was found for the Plaintiff. And now moved in Arrest of Judgement, that the summes were not cast. The Court thought it good, for it was the fault of the Clerk, and had been good, without quæ in toto stringunt, Bendl. 201.

Case 214.

Promise of money upon a Marriage at several daies.

Damages entire.

Tho. Josselin, Knight, brought an Action upon the Case against John Shelton, Knight, and declares, that the said Defendant, for consideration of Marriage made between the Son of the Plaintiff, and the Daughter of the Defendant: The Defendant promised to the Plaintiff, to pay him four hundred marks, to be paid to him in seven years then next ensuing, scil. at certain feasts by equal portions annually, and for that these four hundred marks were not paid, he brings this Action, and the Defendant pleads Non Assumpsit, and upon this they were at Issue, and it was found for the Defendant in B. C. in damages, &c. Any now in Arrest of Judgement, the Defendant shews by his Councel, that it appears by the Declaration, that one year of the seven was to come, when the Plaintiff purchased his said Writ, so that the Plaintiff had no cause of Action, wherefore the Court abated the Writ for this onely Cause after Verdict, Bendl. 3.

Case 215.

Consideration, delivery of beasts taken damage-feasant. Promise to satisfie for the trespasse.

Harwin, P. 19 Jac. The Plaintiff took the Beasts of the Defendant damage-feasant, &c. the Defendant assumes to the Plaintiff, that if he would deliver to him the beasts, quod ipse bene & fideliter querenti satisfacere vellet pro transgressione, the beasts were delivered, and the Defendant never satisfied for the trespasse, &c. quære whether good for that the value of the trespasse is not shewn. Bendl. 90.

Case 216.

Senior and Wolmer, T. 21 Jac. In an Action upon the Case upon a promise reciprocal, and shews that the Servant had power to agree for his

his Master, and in consideration that the Servant promised that his Master should forbear Suit, &c. and note that the Master afterwards agreed to the Contract, and promise of the Servant, Exception was taken in Arrest of Judgement, that the Judgement was, that it was a good Promise. Doderidge, the Act of the Servant shall bind the Master to many Cases. Bayley says, if I lend my Cattle, this is by the Consent of the Master, and so of an Apprentice: But if an Apprentice lends and warrants Clothes, &c. the Warranty binds not the Masters Act without after in some Cases, relates ibidem, as an Agreement two different will avoid a Lease. Bendl. 132.

Consideration, Servant promised his Master should forbear Suit.
Promise to pay mony.
Act of Servant binde the Master.

Case 217.

Neckold and Peck. M. 4 Car. R. Interest of a Judgement which in an Action upon the Case upon a Promise, if the Plaintiff in the first Action would pay 40 l. to 1. 5. that then upon request the Defendant would deliver an Obligation which was made for payment of it to the Plaintiff. And in an Action upon the Case upon this Promise, the Plaintiff did not allege time or place of the request, but replus requisitus. Serjeant Fitcham moved, that it is Error, for it is part of the consideration, and no Issue can be formed on replus requisitus. Jones and Whitlock, Justices, thought it good, because the Defendant pleads Non Assumpsit, otherwise if hee had demurred, or pleaded in fact, and relyed thereon. Crew and Doderidge thought the contrary, and it was adjourned to see Presidents to make a leading Case. Bendl. 157.

Promise, upon payment of the mony, to deliver up the Obligation.
Request.
Pleading.

Case 218.

Dartnall and Morgan. M. 18 Jac. B. R. Assumpsit, whereas the Plaintiff Louaine to the Defendant a Wiare house in the Parish of St. Dunstans in the East, that the Defendant assumed to pay unto him for every week that hee occupied it eight shillings, and alledges in facto, that hee occupied it eighty seven weeks, for which, upon not paying upon request, the Action was brought: The Defendant pleads Non Assumpsit, and found for the Plaintiff, and it was moved in Arrest of Judgement, that this is a Lease (at least at Will) of the said Wiare house, and that the eight shillings weekly is in nature of Rent, and for Rent reserved upon a Lease (which sounds in the realty) an Assumpsit lies not: But thereto the whole Court agreed, that for Rent reserved upon a Lease, an Assumpsit lies not, nor for a debt upon specialty, as upon Record. And here, for as much as this is not a Lease, but a promise, that as long as hee permitted him to occupy the Wiare house, hee would pay it, it is not any Rent, but meerly a promise, in consideration of the occupying, &c. whereby this Action is well laid, and it was adjudged for the Plaintiff. Croo. 2. part 508.

Promise for a house, to pay a Rent.
Action for a Rent.
Promise to pay Rent as long as he enjoyed.

Case 219.

Bird and Bird. M. 18 Jac. B. R. Assumpsit, when as they *Insimul Computaverunt*, concerning the arrearages of fifty Rent issuing out of the Defendants Land, and about payment of a Legacy of fifty pound due unto the Plaintiff by his Fathers Devise, and it was found that that hundred pound was due unto him: That the Defendant, in consideration thereof, promised to pay it at such a day; The Defendant pleaded Non Assumpsit, pay it.

Against an Executor.
In consideration that there is a Legacy due, he promiseth to

Assumpsit, and found against him; and it was moved in Arrest of Judgement, that it doth not appear here, that the Defendant was Executor, or was chargeable with the payment of this Legacy, nor that he had Assets to pay it, nor how he was chargeable to the payment of this Rent; therefore there is not any consideration for this promise, so no cause of Action; sed non allocatur, for it shall be intended he was chargeable, otherwise he would not have made any such promise, and they accounting together, and he promising to pay, was a sufficient cause of his Action; wherefore it was adjudged for the Plaintiff.

Case 220.

Consideration, to forbear to sue for a Legacy. Promise to pay it.

Bathe and Crampton. P. 19 Jac. B. R. Assumpsit, whereas a Legacy of forty pound was devised to the Plaintiff by I. S. who made the Defendant his Executor, and that divers goods came to the Defendants hands, and the Plaintiff intended to sue him for that Legacy; that the Defendant, in consideration the Plaintiff would forbear his Suit, at such a time promised to pay, &c. Quod Non Assumpsit pleaded, and found for the Plaintiff; it was moved in Arrest of Judgement, that the Declaration was not good, because he doth not averre, that he had Assets at the time of the promise, sed non allocatur, for it shall be intended he had, otherwise he would not have made such a promise; wherefore it was adjudged for the Plaintiff, Croo. 2. part. 623.

Case 221, and 222.

Consideration, loan of money, acceptance of a Bond, and Letter of Attorney, to recover a debt from another, and to discharge the debt.

Promise, if hee pay not the debt assigned, to pay it.

Release.

Discharge of an Assumpsit.

Porter and Phillips. M. 19 Jac. B. R. Assumpsit, 2 July. 1620. In consideration that the Plaintiff would lend unto him seven pound ten shillings, and would accept a Bond of Sir George Mannors of eighty pound, and a Letter of Attorney to sue it, and would promise to release unto the Defendant all Actions and Demands; the Defendant assumed, that if the Plaintiff could not recover from the said Sir George Mannors forty pound within such a time, hee would pay that forty pound unto him upon request; and allengeth in facto the lending unto him the seven pound ten shillings, and the acceptance of the Bond of forty pound, and the Letter of Attorney, and that hee, according to his promise, postea the same day and year released unto the Defendant all Actions and Demands, and that the Defendant had not according to his promise, (although he could not receive from Sir George Mannors, within the said time, &c. & licet requisitus) paid unto him the forty pound; The Defendant pleadeth Non Assumpsit, and found against him; and now moved in arrest of Judgement, that the Plaintiff by this release (which hee himself hath shewn, that he made the same day after the promise of releasing all Actions and Demands) hath extinguished this Action; and therefore by his own shewing hath no cause of Action: But all the Court held the Action to be well maintainable; for this Release is part of the consideration, and the cause which gives him this Action, and without making thereof, hee could not maintain this Action: And although the Release is general of all Actions and Demands, yet that doth not discharge what is future, and whereof hee hath not any Cause of Action at the time of the Release made; wherefore it was adjudged for the Plaintiff, Croo. 2. part. 623. See cases 186. 150. 29. 33. 95.

Case

Case 223.

Jo. Mayor, and Rich. Hatre. M. 20 Jac. B. R. Assumpsit, for that the Defendant was indebted unto him in forty pound, & sic indebitatus existens, in consideratione inde assumpsit solvere, upon request, &c. After Non Assumpsit pleaded, and found for the Plaintiff, it was moved in Arrest of Judgement, that the Declaration was not good; for that hee doth not shew for what cause hee was indebted, so as the Defendant doth not know how to provide him an answer. And it is not a promise, in consideration of forbearance till such a day, or such a special promise, for that might be good; and to that purpose was cited M. 6. Jac. betwixt Buckingham and Cosdes, that for this cause Judgement was reversed. And of that opinion were all the Court, viz. Doderidge, Houghton, and Chamberlain (absente Lea) and gave rule, that Judgement should be entred for the Defendant. Croo. 2. part 642.

Upon an *Indebitatus* of a former debt.

Pleading.

Consideration.

Case 224.

Arundel and Gardner. M. 20 Jac. B. R. Assumpsit, whereas the Defendant had a fieri facias, for sixty one pound of the goods of Jo. Layer, and delivered that Writ to the Sheriffs of Norwich, to whom it was directed to execute, and affirmed to the Plaintiff, that the Woollen Cloth in the Shop of Christopher Layer, were the Wares of Jo. Layer, and liable to execution for the said summe, and required him to execute it; That the Defendant adtunc & ibidem, in consideration that hee would seize the said Cloth for the said execution, assumed to the Plaintiff, that hee would enter Bond to the Sheriffs of Norwich, when hee should be required in any reasonable summe, to save them and the Plaintiff harmlesse against all persons for entring into the said Shop, and taking Execution of the said goods; and alledgeth, that hee giving evidence to that promise, entred into the said Shop, and took Execution of the said goods; and for this cause Christopher Layer sued him in trespasse, and recovered seventéen pound in damages and costs; and that the Defendant licet sæpius requisitus, had not entred into any Bond to the said Sheriffs, &c. Upon Non Assumpsit pleaded, and found for the Plaintiff, it was moved in Arrest of Judgement: first, that this promise upon this consideration is against Law, to take execution of goods, which were not the Defendants, and to save him harmlesse against all persons; and therefore it is not good. 2 H. 4. sed non allocatur; for hee, shewing the goods, and requiring the Sheriff to do execution, it is reasonable that hee should save them harmlesse, and a promise to that purpose is good enough. Second Exception was, that this promise is uncertain to give Bond in a reasonable penalty, and it is not agreed what it should be, and therefore void. Thirdly, betause it is licet sæpius requisitus, hee hath not entred into Bond, and hee doth not shew by whom the request was made. Fourthly, betause hee doth not shew that hee tendred a Bond unto him; for hee being to enter into Bond upon request, hee who would have the Bond, ought to make it ready, and to require it, &c. sed non allocatur; but Judgement was given for the Plaintiff. Croo. 2. part 652.

Consideration, that the Sheriff should take such goods in execution.

Promise to save him harmlesse.

Assumpsit against Law.

Promise incertain.

Request.

Case 225.

Against Executors.

Pawcet and Charter. M. 20 Jac. B. R. Error in the Exchequer Chamber,

Promise, by the Testator, to deliver a Bond.

ber, of a Judgement in the Kings Bench, in Assumpsit against Executors, of a promise of their Testator, viz. that hee should re-deliver such a Bond, delivered for such a thing; and because the Testator did not re-deliver the said Bond, the Action was brought against the Executor: And after Verdict and Judgement for the Plaintiff, Error was now assigned, that this being a meer Collateral promise made by the Testator, and broken by him, there lyes not any Action against the Executor. And of that opinion was Tanfield, Chief Baron, who said, hee knew it had been often so adjudged; and the difference is, between a promise to do a Collateral Act, and where it is a promise to pay a summe of money, which is a duty certain by the Testator, for the not doing whereof, an Action lyeth against the Executor: But a Collateral promise is not any duty, nor performable by the Executor, and therefore an Action lyes not against the Executor for the non-performance thereof. But the Lord Hobert, and all the other Justices of the Common Bench, and Barons of the Exchequer, held, that there is not any difference betwixt the Cases, but in either of them the Action is maintainable against the Executors, upon a promise of their Testator: And so hath been often adjudged in this Kings time. But they said, true it was, that such an opinion was conceived in the time of Queen Elizabeth, and divers Judgements reversed for this Cause: But now of late the opinion of both Courts are reconciled, and resolved, that the Action lyes against the Executor, as well in the one Case, as in the other; wherefore the Judgement was affirmed against the opinion of Tanfield. And here on the first day, when the Debate was, Jones was absent: And it was much argued, whether this Judgement should be affirmed or reversed, because the opinion of five of them was against it, and Tanfield and Winch for it; who said, that by the precise words of the Statute, there ought to be six agreeing to affirm, or reverse a Judgement; but this question they resolved not, for Jones came and agreed with the five, whereupon the Judgement was affirmed. Croo. 2. part 662. See cases 73. 236. 241.

Where an Executor is bound by the promise of the Testator.

Case 226.

Contract between Merchants.

Martin and David Boure, P. 1 Jac. B. R. Assumpsit, whereas Nicholas Salter was indebted to Alexander Harris, being at Aleppo in Spain, in two hundred eighty three pound six shillings eight pence, amounting unto one thousand three hundred twenty six dollars, called Royals of eight, Monetæ Hispaniæ; and Alexander Harris agreed with the Defendant, that Nicholas Salter should pay unto him that two hundred eighty three pound six shillings eight pence in England, and that the Defendant should pay unto him the value of that money at Aleppo in Spain, and thereupon deliver to the Defendant a Bill of Exchange, requiring N. S. to pay that money accordingly, in consideration that the Plaintiff, at the Defendants request, would deliver that Bill to the said N. S. and receive of him the said two hundred eighty three pound six shillings eight pence, and in consideration that the Plaintiff would deliver to the said N. S. a Bill of Exchange signed with his hand, secundum usum Mercatorum, requiring the Defendant to pay to the said I. S. the value of that two hundred eighty three pound six shillings eight pence, in Spanish money at Aleppo; And in consideration that the Plaintiff would assume to the said N. S. that the Defendant should pay to the said A. H. the value of the said two hundred eighty three pound six shillings eight pence in Spanish money in Aleppo, according to the said Bill, the Defendant assumed

sumed that hee would pay to the said A. H. the value of the said two hundred eighty three pound six shillings eight pence in Spanish mony at Aleppo, pro ut, by the said Bill of Exchange by the Plaintiff to be made, should be appointed, and alledgeth in facto, that hee delivered to the said N. S. the said Bill of A. H. and received from him two hundred eighty three pound six shillings eight pence to the Defendants use, and delivered unto him a Bill signed with his hand, directed to the Defendant, requesting him to pay the said A. H. at Aleppo one thousand three hundred twenty six dollars, called Royals of 8 Monetæ Hispanicæ, and that the Defendant assumed to the said N. S. that hee, the Defendant, would pay to the said A. H. the said one thousand three hundred twenty six dollars, called Royals of eight, Monetæ Hispanicæ, according to the said Bill; And that the Defendant had not paid them, &c. The Defendant pleaded Non Assumpsit, and it was found against him, to the Plaintiffs damage of three hundred pound, and Judgement accordingly, and Error thereof brought in the Exchequer Chamber, and assigned.

First, Because the considerations are executory, which ought to be precisely alledged to be performed according to the agreement, and they are not performed according to the agreement.

First, Because he ought to have given a Bill of Exchange signed with his hand, secundum usum Mercatorum, and if it be not so, he is not bound to pay it, because it varies from his agreement.

Secondly, Because his Assumpsit is, that if hee gives his Bill, directed to the Defendant, to pay the value of two hundred eighty three pound six shillings eight pence in Spanish mony, &c. and assume that the Defendant shall pay that value of two hundred eighty three pound six shillings eight pence in Spanish mony, &c. That hee will pay it: And he doth not pursue this agreement; for hee gives his Bill to pay one thousand three hundred twenty six dollars, called Royals of eight, which is not according to the agreement; for hee thereby tyes himself to pay that kinde of mony, and not generally, the value of two hundred eighty three pound six shillings eight pence, and so it varies from the agreement, which hee is not bound to performe; as if the promise had been, that if hee gave his Bill, that I shall pay the value of a hundred pound in English mony, I will pay, &c. And hee gives his Bill that I shall pay the hundred pound in Spur-Royals, I am not bound to performe it; for where I have election to pay it in any mony, hee tyes mee to pay it in that kinde of mony onely, so as hee takes from mee my election in what mony I will pay it, and makes mee peradventure to be at the charge of exchanging it into that mony, sed non allocatur, because it is averred, that one thousand three hundred twenty six dollars, &c. to be of the value of two hundred eighty three pound six shillings eight pence; therefore it is all one, and shall not be intended that the payment of them in other mony should be prejudicial unto him; wherefore without hearing any argument, or greater deliberation, the Judgement was affirmed. Croo. 2. part 7. Martin and Boore, Pasche. 44 Eliz. Exchequer Chamber. Note, these Exceptions were not moved in the Kings Bench.

Case 227.

Promise for mony, to assure Coppy-hold land, as A. shall advise. How to be observed.

Staynrode and Locock, P. 4 Jac. B. R. Assumpsit, for that the Defendant, in consideration of such a summe paid unto him, assumed to assure such Coppy-hold Land to the Plaintiff, in such manner, as one Drables should advise; and alledges in facto, that Drables advised, that hee should

No breach.

make a surrender of that Land at the next Court of the Manno, to the use of the Plaintiff, and his Heirs, and should enter into an Obligation of forty pounds, for the enjoying of that Land against all persons; and alledgeth the breach, for not making that surrender, and for not becoming obliged according to the said Order; the Defendant pleaded Non Assumpsit, and found against him; and it was now moved in arrest of Judgement, that this breach in not entring into the Obligation, was ill: And then damages being given as well for that, as for the other, na Judgement may be entered; and of that opinion was the whole Court, for the Order which Dibles mens, that the Defendant should make an Obligation of forty pounds, is out of the Assumpsit; and therefore the other is not bound to perform it. And the breach being assigned in two things, whereof the one is not any cause of the breach of the Assumpsit, the damages being given entirely, are intended to be given as well for the one, as for the other, therefore ill, wherefore Judgement was given for the Defendant, Croo. 2. part 115. and Noy. 124.

Case 228.

Consideration that hee owes such a summe. Promise to pay it quarterly, and to enter into bond to pay it.

Certainty.

Gregory and Wikes, P. 4 Jac. B. R. Assumpsit, whereas the Defendant was indebted to the Plaintiff in fifteen pounds, that the Defendant promised to pay it by five and twenty shillings the Quarter, and to enter into Bond upon request for the payment of those summes, and alledgeth, that request was made for payment thereof, which request was made after the end of the Quarter, after the promise; After Verdict for the Plaintiff, it was moved in Arrest of Judgement, that this request to enter into Bond of thirty pounds, and refusal thereof, was not any breach, for there is not any promise to enter into Bond in any summe certain, sed non allocatur, for the Assumpsit being to enter into Bond, no summe being mentioned: It is intended a Bond of the double summe, which is the usual course between parties, and after the common intendment; wherefore it is good enough. Secondly, because the Request is after a Quarter past, which is not sufficient, being after the day of payment; for if there should be a Bond for the payment at a day past, it should be a forfeiture presently; wherefore for this Cause it was adjudged for the Defendant, Croo. 2. part 116.

Case 229.

Indebitatus Assumpsit, not shewing the cause of the Debt.

Certainty.

Woodford and Deacon. P. 6 Jac. B. R. Error in the Exchequer Chamber of a Judgement in B. R. The Error assigned, because the Plaintiff in an Assumpsit declares, that the Defendant being indebted unto him, assumed to pay, &c. and doth not shew for what cause the debt grew, viz. for Rent, or by Specialty, or by Record: And if by any of those means, a general Assumpsit lyes not; and for this cause all the Judges and Barons held it to be Error: But if it had been, that hee being indebted for divers wares sold, or for such like contract, assumed to pay, &c. It had been good enough for the generality thereof; and because a Recovery in this Action should be a Barre of such a debt; therefore for this reason it was reversed; although it was objected, that there be many Precedents of such Actions in the Kings Bench. The like Judgement was given between Fayreclough and Seed. And M. 6. Jac, between Buckingham and Colferden, Croo. 2. part 206, and 213. See Cases 6. 84.

Case

Case 230.

Belcher and his Wife, and Hudson. T. 7 Jac. B. R. Assumpsit, for that the Defendant assumed to the Feme of the Plaintiff in her Widow-hood, that if shee would marry Tho. Mason, hee would pay unto her annually after the death of the said Mason, during her life forty shillings; and alledges in facto, that shee married Tho. Mason, and after his death married the Plaintiff, and for non-payment of forty shillings annually after his death, brought the Action: The Defendant pleads a Release from Tho. Mason, of all Actions and Demands which hee had, or, &c. And it was thereupon demurred, and after Argument at the Barre, adjudged to be no Plea, for being a promise to perform a payment after the death of Tho. Mason, it was not in demand during his life, nor by any possibility could ever be demanded by him; wherefore, &c. Croo. 2. part 211. See the like Case, Case 234.

Promise to a Widdow, if she marry him, to leave her so much after his death.

Promise discharged.

Release in Law

Case 231.

Beashford and Buckingham. H. 5 Jac. B. R. Error of a Judgement in Assumpsit by Baron and Feme, during the Coverture, in consideration shee would cure such a wound, that hee would pay unto her ten pounds, and alledges in facto, that shee had cured the wound, and hee had not paid, to the damage of the Baron and Feme: And it was assigned for Error, that the Baron sole should have had the Action; for being a promise during the Coverture, the non performance is onely damage to the Baron, and not to the Feme: But for that the Cause and Act is arising onely from the labour and skill of the Feme, therefore the Action is well brought; and the Judgement was affirmed. Croo. 2. part 205.

By Husband and Wife.

For the cure of a wound by the Wife, during the Coverture.

Case 232.

Beachey and Toder. M. 7 Jac. B. R. Assumpsit, in consideration hee would marry such a one his Cousen, that hee would give him a hundred pounds, and alledges in facto, that hee married her such a day, and place, and although hee requested the Defendant such a day and place to pay, yet hee had not paid: Upon Non Assumpsit pleaded, and found for the Plaintiff, it was moved in Arrest of Judgement, that the declaration was not good, because it is not alledged, that hee gave Notice of his Marriage: And of that opinion upon the first motion, was the whole Court; for a precise Notice of the Marriage ought to be given: And although it is alledged, that hee married the Feme, and afterwards at such a day requested the money (which implies the Notice alledged) yet it is not good a Declaration which ought to be certain, and is not to be maintained by intendment: But afterwards being moved again upon a President shewn, between Mothy and Hodges, in the Exchequer Chamber, where in this Court, in the like Action verbatim (and no notice alledged) Judgement was affirmed; the Court resolved, that it was good enough; for it is a necessary intendment, That when after Marriage hee requested the payment of the mony, that notice was given of the Marriage; wherefore it was adjudged for the Plaintiff. Croo. 2. part 228.

Promise of money in consideration of Marriage.

Pleading.

Special Notice to be shewn.

Case

Case 233.

Sur Indebitatus.

Richard Rook and Nicholas Rook. T. 8 Jac. B.R. Assumpsit, whereas the Defendant, 10 Febr. 7 Jac. in consideration hee was indebted to the Plaintiff in forty pound, viz. per diversis denarior. summis ei præstitis, ac pro diversis —de eodem Richardo receptis & habitis, & pro quadam pecuniæ summa, by the Plaintiff at the Defendants request, to one Jo. Arnold solut. for diet. assumed to the Plaintiff, that hee would pay the said forty pound unto him, ante inceptionem proximi itineris of the Plaintiff to London, and alledges in facto, that hee upon the 23 of February following incepit iter suum ad London, and came thither the 29 of the same month; yet the Defendant has not paid him the said forty pound, licet sæpius requisitus; After Non Assumpsit pleaded, and Verdict for the Plaintiff, it was moved in Arrest of Judgement, that the Declaration was not good; First, Because it is not shewn how much hee was indebted for every of the Causes, and so it is two general, sed non allocatur; for it is not material, being that he was indebted so much in toto, hee needed not to shew every particular. Secondly, Because hee doth not shew that it was his proximum iter to London; for otherwise there is no cause of Action for the non-payment before the Journey. And although it was alledged, that it should be so intended, being in so short a time after the bargain, and no other being shewn; yet the Court held, it was a material Exception, for the duty grew upon the commencement of his next Journey; and therefore hee ought to shew it, to enable himself to the Action, as if the promise had been, to pay such a summe to him who first comes to Paris; wherefore for this cause the Declaration was held to be ill, and adjudged for the Defendant. Croo. 2. 245.

Promise to pay before his next Journey to *London.*

Request.

Pleading.

Case 234.

Tolhurst and Brickenden. M. 8 Jac. B.R. Assumpsit, whereas hee was in communication with the Defendant to buy two fat Oxen, and promised to pay for them infra breve tempus seventeen pound, that the Defendant thereupon assumed to deliver them unto him, and he has, that within fourteen dayes hee paid nine pound, and was ready to have paid the residue; and that the Defendant delivered unto him one of the Oxen, but would not deliver the other, &c. Upon Non Assumpsit pleaded, and found for the Plaintiff, it was moved in Arrest of Judgement, that the promise to pay infra breve tempus, is uncertain, and is not any consideration at all, and the other thereupon is not bound to keep his Oxen for him, but may sell them to any other; and although he offered to pay within fourteen dayes, that is not material: And of that opinion was all the Court, for breve tempus, is uncertain, & non constat what time it is: And if there be any certainty, it ought to be such a time onely, as hee might have, and settle his money, and the other is not bound to attend him any longer time; wherefore the Declaration that hee returned within fourteen dayes, and tendered the money, is not material, whereupon it was adjudged for the Defendant. Croo. 2. pag. 250.

Consideration, the buying of Oxen, and promisse to pay for them.

Promise to deliver them in a short time.

Incertainty.

Case 236.

Against an Executrix.

Bond and Paine, and his Wife. P. 9 Jac. B. R. Assumpsit, whereas one B. was indebted unto him in thirty pound, which hee had lent to the

the said B. and being so indebted, made the Feme his Executrix, and intreated her to pay that debt, and dyed; that shee proved the Will, & prætexu Testament. prædicti fuit possessionatar. of a Lease for years of such a house: And, in consideration that the Plaintiff should not sue nor molest her (being Executrix) for this mony, and would give unto her a Quarters day, viz. until Michaelmas next following, shee promised to pay it, &c. Upon Non Assumpsit pleaded, and found for the Plaintiff; it was moved in Arrest of Judgement, that the Action lay not against the Executrix; for the Debt being upon a Contract, and no special promise, no Action lyes against the Executrix. Also it is not averred, that shee had Assets in her hands; and there is not any cause of consideration to make that promise; and although it be alledged, that shee was possessed of that Term prætexu Testamenti, yet it doth not thereupon follow that shee had Assets, for shee might have it in satisfaction of debts which shee had paid, or is chargeable for debts upon specialty, more than that comes to. But notwithstanding, without much argument it was adjudged for the Plaintiff; for the Loan implies a Promise, and the Executrix is chargeable therewith; and this Action is grounded upon her promise; and being alledged that shee had the Term, it shall be intended shee had it as Assets; and his forbearance of Suit, and her having of Assets, are the Causes of this Action; wherefore it was adjudged for the Plaintiff. Croo. 2. part 273. See case 225.

Consideration, to forbear the debt of the Testator, till such a time.

Promise to pay it.

Case 237.

Somersall and Barneby, M. 9 Jac. B. R. Assumpsit, whereas communication was betwixt the Plaintiff and Defendant, for and concerning credit to be obtained and given for Charls Fox; that the Defendant, in consideration of the premises, and in consideration that the plaintiff would be obliged for the said Charls, in such summes of mony, and to such persons, as the said Charls should desire of the Plaintiff, promised, that he would discharge and save harmless the Plaintiff, of and concerning all such summes of mony, and all such debts as he should become bound to any person, as surety for his said Son, and alledged in facto, that he, at the request of his Son, 14 Novemb. Jac. at such a place became obligeth as Surety for the said Charls for his debt, to one Robert Clark in two hundred forty pounds, with condition for the delivery of twenty fovers of Lead, upon the twentieth day of May following; the which twenty fovers of Lead, nor any part thereof the said Charls did not deliver, whereupon the Bond was forfeited, and he compelled to pay the said two hundred forty pound for the debt of the said Charls, to the said Robert Clark. The Defendant pleaded Non Assumpsit, and found against him, to pay damages of two hundred and fifty pounds; and now moved in Arrest of Judgement.

Consideration to engage for my friend, promise to save me harmlesse.

Pleading.

First, Because it is alledged, that he was obliged at the request of the said Son, and doth not shew the day, nor place where the Son requested; sed non allocatur.

Secondly, It is alledged that he was obliged with a Condition to deliver twenty Fovers of Lead, which is not a debt of the Son, but for a Collateral Matter, which is not within that promise, no more than if he had been obliged to assure Land of his Fathers.

Thirdly, It is alledged, that he entred into Bond with the Son to deliver Lead, but it is not expressed whom the Lead should be delivered to; sed non allocatur, for it shall be intended to the person upon the Bond was made.

Fourthly,

Notice to bee given.

Fourthly, Because it is not alledged, that he gave notice unto the Defendant of that Bond, nor requested him to save him harmlesse from it; and the Defendant is a stranger thereto, and doth not know in what Bonds the Plaintiff is obliged with his said Son; and being a future thing to be entred into by the Plaintiff, the Defendant, being a stranger, ought to have notice thereof from him: But if it had been, to save him harmlesse from Bonds formerly entred into, it had been otherwise; for there by intendment, the Defendant had as well cognisance of them, as the Plaintiff, sed non allocatur, for the Court said, it was all one, and that hee, at his perill, ought to take notice thereof.

Fifthly, Because it is not alledged, that hee was compelled to pay two hundred forty pound, per debitum Legis formam, nor doth shew how, sed non allocatur, for it is not material to be shewn; wherefore it was adjudged for the Plaintiff. Croo. 2. part 287. See cases 48. 170.

Case 238.

Statutes delivered to satisfie a debt.

Promise, upon re-delivery of them, to pay the mony.

Mallory and Lane. P. 11 Jac. B. R. Error in the Exchequer Chamber of a Judgement given in B. R. in an Assumpsit, for that whereas the Father of the Defendant Mallory being indebted unto him, the said Lane in two hundred pound, did deliver to the said Lane two Statutes of Sir Jo. Wentworth of four hundred pound; and promised to make unto him an Assignment, and Letter of Attorney, to recover and receive the said debts upon the said Statutes, and dyed before any Assignment, the Defendant pretending himself to be Executor unto his Father, requested the Plaintiff Lane to deliver unto him the said Statutes; and in consideration that hee would deliver them, promised to pay unto him two hundred pound at sundry days; and that upon his promise hee delivered unto him the Statutes, and that hee has not paid, &c. Upon this Mallory the Defendant in B. R. pleaded Non Assumpsit, and found against him, and Judgment accordingly: And whose was assigned for Error, that it was not a sufficient Consideration to ground an Action; for the Plaintiff hath no interest in the Statute, and the re-delivery of them unto the Defendant, therefore than the delivery of such things as belong unto him, if he be Executor. But it is here alledged, that the Defendant Mallory pretending himself to be Executor; he doth not shew that hee is Executor, and then he hath no cause by the delivery of them unto him, sed non allocatur, for all the Justices and Barons held it to be a good consideration; for when Lane has the Statutes delivered unto him lawfully, although he had no Assignment of them, so as hee might sue them; yet he might retain them: And therefore this re-delivery of them unto the Defendant Mallory without Suit, is a sufficient consideration: Also they held, although the Defendant Mallory is not shewn to be Executor, but pretend himself to be Executor, yet obtaining the Statutes into his hand upon this consideration, it is a sufficient ground for the Action against him; wherefore the Judgement was affirmed. Croo. 2. part 349.

Consideration not valuable.

Against an Executor.

Case 239.

Promise to pay for advise in Physick as much as it should deserve.

Shepherd and Edwards. P. 11 Jac. B. R. Assumpsit, in Error of a Judgement in Exon, before the Bailiffs and Bailiffs there; the Error assigned, because that Edwards the Plaintiff declared, that hee being a Professor of Physick, and Chirurgery, and so in ding bee for divers years; and the Defendant being troubled with a disease, called a Fistula, and in danger

danger of his life by reason of that disease, the Defendant the 16 Martii, 1603. in consideration that the plaintiff would with his best skill apply wholesome medicines for the curing the Defendant of his disease, hee non operam & bonum suum commodare, & impendere to the said Defendant in ea parte, assumed, and promised to pay unto him upon request, such a summe of money, as the plaintiff for his pains and counsel in & circa curationem morbi praedicti impensurus erat. Alledgeth in facto, that the plaintiff the said 16 Martii, 1603. se diversis diebus & vicibus betwixt the said 16 of March, and the last of February following, according to his best skill, caused to be applied divers medicines for cure of the said disease, hee non operam & bonum suum pro illo tempore in ea parte dedit to the Defendant, and that the Defendant, as well by the means of the said Medicines, as by the labour and counsel of the plaintiff, was by the said last of Febr. 1603. well cured of the said disease, and made whole. And hee saith in facto, that hee well deserved a hundred pounds for his labour and counsel bestowed upon curing the said disease; And that the Defendant, although hee hee been required, had not paid the said hundred pounds, or any part thereof. The Defendant pleaded Non Assumpsit, and found against him, and thereupon the plaintiff had Judgement, although it was objected that quantum meruerunt was insufficient and uncertain. Croke 2. pag. 370.

Case 240.

George Therne and Jo. Fuller, P. 14 Jac. B. R. Error in an Assumpsit, whereas Tho. Fuller the Defendants Brother, was indebted unto him thirty two pounds, which being not paid, he for the recovery of the said debt, extra Curiam Domini Regis ad placita coram ipso Rege tenenda assignat. procuravit an alias capias to arrest him returnable quindena Hillarii to answer him in placito praedicto: And that he delivered the Writ to the Sheriff of Bucks, who by virtue thereof 24 Jan. the same year arrested him: That the Defendant postea, scilicet, 12 Aprilis Jacobi in consideration that the Plaintiff, at the Defendants request, advisam & solum would assent, and be contented to desist from further prosecution of the said Suit, against the said Tho. Fuller so begun, and would remit unto him his costs, the said Jo. Fuller assumed to pay that summe at the Feast of St. Michael, or then to give him security to pay the said Debt unto him at the end of six months; and alledgeth in facto, that hee did forbear to prosecute, and that hee has not paid it, nor given him any security: After Verdict and Judgement given for the Plaintiff, and now Error brought.

Consideration of forbearance of a debt, promise to pay, and to secure it.

Pleading.

The first Error assigned, was, because hee doth not alledge how, and in what manner hee became indebted, sed non allocatur, for although it be true (as all the Justices here agreed) that an Assumpsit lyes not upon a general allegation against the party, quod indebitatus Assumpsit, without shewing how hee was indebted, viz. for Ware sold, or money lent, or such good cause; yet for as much as the Debt is here collaterally due by another, and the consideration is the staying of the Suit after the Arrest, it is good enough.

The second Error, because it is alledged, that he prosecutus fuit extra Curiam Domini Regis ad placita, &c. where (as was alledged) there was not any such Court by that Addition, but it ought to have been extra Curiam Domini Regis Coram ipso Rege tenend. for the other Addition is onely for the Judges of the Court, that they are assigned, &c. sed non allocatur, for it is all one in substance.

Consideration not valuable.

Thirdly

Thirdly, Because the consideration, quod assentit & consentus fuit to forbear to prosecute, is no sufficient consideration, for he may forbear one day, and prosecute again the day following, Ista non allocatur, for it is a promise for an absolute forbearance of the prosecution, for that is implied.

Fourthly, That the promise is in April, and the arrest being in January before, it doth not appear that the Writ was resumed, nor that it was continued, nor what became of it, or that it had any effect, and it cannot be said to be a Suit continued, Ista non allocatur, for being alledged that the Writ was sued out, and that hee was thereupon arrested, it is sufficient connecting thereof, the saying of which is a sufficient ground for this Action; wherefore notwithstanding these Errors assigned upon the first motion of them, the Judgement was affirmed. Croo. 2. part 298.

Case 241.

Sanders and Esterby. Hil. 4 Jac. B. R. Error in the Exchequer Chamber, of a Judgement in B. R. in an Assumpsit against an Executor, upon a promise with the Testator, who in consideration hee would marry his Daughter, promised hee would pay unto her a hundred pounds, and leave unto him as much as hee left, or gave to any of his other children, and alledges in facto, that hee left so much to one of his children; and for non-performance of this last part of the promise, hee brought the Action, and averres, that the Testator left Assets, as well to discharge all his debts and Legacies, as satisfie him: And after Verdict, upon Non Assumpsit, being found for the Plaintiff, and Judgement given accordingly, Error was brought and assigned, that the Executor is not chargeable for this Collateral Promise. But without Argument all the Justices and Barons (besides Fanfield Chief Baron) held, that the Action well lies against the Executor, as well for this Collateral promise, as for a debt. But Fanfield doubted thereof, for hee said, it had been oftentimes adjudged, that upon such a meer Collateral promise, the Executor is not chargeable, notwithstanding without further Debate Judgement was affirmed. Mate, Croswell Clerk of the Errors said, that once they were all of opinion to reverse the said Judgement. Croo. 2. part 417. See cases 132. 223.

Promise, upon Marriage, to leave as much as to any of his children.

Where, and how an Executor is chargeable.

Case 242.

Henning. T. 15 Jac. B. Regis. Assumpsit, Henning bought two weighs of Barley, and assumed to pay for them, as much as the Plaintiff should have of any other, abating a penny onely in every Bushel: the Plaintiff shewes, that hee sold to I. S. after this Agreement, two weighs of Barley for eighteen pound, which (abating the one penny in every Bushel) amounted to seventeen pound ten shillings; and thereupon brought his Action: And because it did not appear in the Declaration, that notice was given to the Defendant, that I. S. had given eighteen pound, the Judgement was arrested; and for the same reason a Judgement was reversed betwixt Twist and Holmes; and this difference taken, if the Agreement be, that hee shall pay so much as I. S. in particular paid; in that Case, quia constat de persona, and hee is indifferently named betwixt them, the Defendant at his peril shall inquire of him, and the Plaintiff is not bound to give notice: But when the person is altogether uncertain, there the Plaintiff to intitle himself to the Action, ought to give notice: And Houghton cited this Case to be lately adjudged, one assumes

Promise to pay for Barley, as much as he had of others, &c.

How to be taken.

Notice to be given.

Pleading.

assumes to save harmlesse I. S. of all Obligations wherein hee shall bee bound for I. N. and in an Assumpsit brought, shews that hee was bound in an Obligation for I. N. from which hee was saved harmlesse, and doth not shew that hee gave any notice to the Defendant, yet held to be good enough. Croo. 2. part 432. See cases 342. 276. 278. 307. 381.

Case 243.

Brocking and Cham. P. 15 Jac. B. R. Assumpsit, that hee should enjoy such Lands according to his Lease, without the let, interruption, or incumbrance of any person; and shews in facto, that this Land was extended for debt due to the King by Processe out of the Exchequer, and so incumbred, &c. After Verdict it was moved in Arrest of Judgement, that this was not a good breach assigned, for hee doth not shew for whose debt, nor when, nor by whom it was due; and it may be that it was for the Plaintiffs own debt: And although it was alledged, that if so, and hee thereby did not perform the promise, it would not help him: yet it was adjudged for the Defendant, for the Plaintiff ought to shew a lawful incumbrance; otherwise hee might have his remedy elsewhere. Croo. 2. part. 425. See Dyer. 328. 2 Ed. 4. 15.

Promise to enjoy Land according to his Lease without the let of any.

Pleading.

Case 244.

Coveney and Wooden. P. 10 Jac. B. R. Assumpsit, the Plaintiff declares, in consideration that the Plaintiff suffered the Defendant to occupy such a House of the Plaintiffs from such a day, till Michaelmas following, the Defendant promised to save harmlesse the Plaintiff from all losses which hee should have by his inhabiting in the said House, and also that for every farthing worth of damage, that the Plaintiff shall have by such dwelling of the Defendant there, the Defendant would give unto the Plaintiff two pence upon request: The Plaintiff alledges, that the Defendant occupied and inhabited in the house by his permission, and that the said House, during the time the Defendant inhabited there, and before Michaelmas, was burnt by fire, through the negligence of the Defendant, and yet had not the Defendant saved the Plaintiff harmlesse of the damage which hee had sustained by reason of the Defendants dwelling there, nor paid the Plaintiff two pence for every farthing worth of losse which hee had sustained, to his damage of forty pound: The Defendant pleaded Non Assumpsit, and found for the Plaintiff, to the damage of forty pound, and yet nil capiat per Billam entred, for that the Plaintiff shewed not in his Declaration, how many farthings losse hee sustained by the burning of the House, and this is material, for the Court cannot intend, but that the Jury hath given damages, as well for the not saving of the Plaintiff harmlesse, as for the farthings worth of losse that the Plaintiff had; and this the Jurors ought not to do, unlesse the Plaintiff shew to how many farthings his losse did amount, per totam Curiam. Yelverton. 220. See cases 307. 316. 332.

Consideration, that hee hath occupied such a house.

Promise to save him harmless.

Burning of a house by negligence.

Pleading.

Case 245.

Dalby and Cook. H. 7 Jac. B. R. Assumpsit, whereas the Defendant accounted Insimul with the Plaintiff 1 Martii. 6 Jac. of divers summes of mony due by him unto the Plaintiff, and was found in arrearages six pound in consideratione inde, hee promised to pay it to the Plaintiff cum inde

For arrearages of debt upon an Account.

inde hee should be required, yet the Defendant had not paid the six pound, though on such a day required, damage twenty pound; The Defendant saith, that before the first of March, &c. in which the account and promise is supposed, the Defendant accounted with the Plaintiff, and was found in arrear six pound, and that afterwards, and before Martii 6. viz. 5 Decemb. 41 Eliz. for better security of the six pound, the Defendant and another entred Bond to the Plaintiff in fourteen pound for payment of seven pound at a day to come, which Bond the Plaintiff accepted for security of the six pound absque hoc, that the Defendant ante vel post the Bond Insimul accounted with the Plaintiff, &c. And upon this the Plaintiff demurred; and it was adjudged for the Defendant, and that the Travers was good; for the consideration meerly is not traverst in this case; for it was agreed, that this is not traversable, but here the account which makes the consideration perfect, is onely traverst, for the debt is confest and avoided, by the satisfaction by Bond, and by that the Assumpsit also is confest: And here tantamounts, as if the Defendant had pleaded payment, and the Plaintiff demurred; for this Action being to recover damages for the monyes not paid according to promise, and the Plaintiff by the demurrer confessing payment, or other satisfaction by Bond, as in this case it appears to the Court, that the Plaintiff is not grieved, nor hath any cause of Action. Yelverton. 171. See case 309.

Bond given for the mony.

Pleading.

Case 246.

Fish and Richardson. M. 2 Jac. B. R. Assumpsit; the case was such; Fish had a debt owing to him by the Testator Richardson upon a simple Contract, and came to the Defendant, and signified it unto him; who said, that if the Plaintiff would forbear Suit against him for a time, hee promised to pay him; it is a good promise in Law, for though the Defendant might wage his Law in an Action brought against him by the Law, because it is of anothers Contract, yet in Law such a debt upon a simple Contract remains a debt, and is not absolved by the death of the Testator: And according to the Book, 10 H. 6 Action of debt lyes against an Executor for this; and if hee plead to it, and doth not demurre upon the Declaration: Judgement shall be given against him, and the Court ex Officio, shall not abate it without challenge of the party; but if the Heir promise upon forbearance of Suit to pay such a debt, yet no Assumpsit lyes against him, for it is no consideration, because the Heir is not liable to any debt sans specially. Yelverton. 55.

Promise to pay upon forbearance by an Executor.

Case 247.

Pikard and Cotrells. M. 2 Jac. B. R. Assumpsit, the Plaintiff shews himself to be possessed of a House in London, in which Sebastian Underholster had a Chamber, that Sebastian was indebted to the Plaintiff in a hundred pound, and dyed, possessed of the Chamber, and of divers Writings and summes of mony, ibid. remanent. And that the Plaintiff after his death, for recovery of his debt, attatcht the goods, &c. being in the Chamber, in the Kings Court before the Mayor, &c. in the hands of the Plaintiff for his debt, according to the Custome of the City; and that the Defendant, in consideration the Plaintiff at his request, would permit the Defendant to enter into the Chamber, and take and carry away the said goods attatched, nec non omnia scripta obligar, being there, promised the same day to pay the Plaintiff his hundred pound; and shews

Consideration, to suffer a man to enter into his house, and take his goods. Promise to pay mony.

shews in facto, that hee permitted the Defendant to enter the Chamber, &c. yet hee has not paid him the hundred pound; and upon Non Assumpsit pleaded, and found for the Plaintiff, where it was adjudged, that the permitting the Defendant to enter into the Chamber, and to take and carry away the goods attacht was the consideration: And also there being two Considerations express, the one to carry away the goods attacht, the other the carrying away certain Writings Obligatory, which were not attacht, although the first part of the consideration should be void, yet the other shall be sufficient to maintain the Action; and Judgement accordingly for the Plaintiff. Yelverton, 56. Consideration of two parts.

Case 247.

Game and his Wife against Harvie. M. 2 Jac. B. R. Assumpsit, the Plaintiffs declare, in consideration that the Wife dum sola, &c. 1 Junii. 43 Eliz. at the instance of the Defendant, accommodaret to the Defendant thirty pound to be paid upon request, the Defendant assumed to pay prædictas thirty pound to the Feme quando requisitus esset, the Plaintiffs lay in facto the thirty pound to be lent the Defendant 1 Junii 43 Eliz. and that hee has not paid the thirty pound to the Feme, dum sola, &c. nor to the Plaintiffs post disponsalia, though by both the Plaintiffs hee was required at B. Maii 44 Eliz. &c. And upon Non Assumpsit pleaded, was found for the Plaintiff, where it was resolved, that when the intents of the parties may stand with Law, it shall be expounded accordingly, and the meaning of the parties here was to have prædictam summam thirty pound, and not the same mony in specie, & eo magis, quia the Assumpsit is grounded upon a Loan, which implies a use of the thirty pound by the Defendant, and therefore it being agreed between them, that the Defendant shall use the mony, it is not possible for him to pay the same mony in specie, which hee receives. But if a man deliver to I. S. a Bagge sealed with mony, and the Defendant promise upon request to deliver it, No Assumpsit lyes on this; for the Defendant hath not any benefit by it, for the mony being in a Bagge sealed, I. S. cannot have any use or imployment of the mony at all, so that hee hath onely a charge imposed for the keeping, but otherwise in the principal case. Yelverton. 50. See cases 79. 231. Action by Husband and Wife upon loan of mony by her *dum sola fuit*. Consideration invaluable.

Case 248.

Slade and Morley. M. 44 Eliz. B. R. Assumpsit, Action upon the Case upon Indebitatus Assumpsit, lyes well; for every debt implies a promise, and is a good consideration in facto, on which to found an Action. But for debt by simple Contract due by the Testator, no Assumpsit lyes against the Executors; and this was openly delivered by Popham, Chief Justice, 9 Novemb. 44 Eliz. to be the resolution of all the Justices of England, and this to be a precedent for all cases following. Yelverton 20. Upon an *Indebitatus Assumpsit*. Against Executors.

Case 249.

Jennings and Harley. Mich. 44 Eliz. Assumpsit, the Plaintiff declares, how hee such a day and year recovered against one Basset in B. C. in an Action of Debt, upon an Obligation of fifty pound, and how upon this recovery hee took forth a special Cap. utlag. for the body, goods, and land of Basset; and shews the Tenor of this Writ especially, and how the Consideration of forbearance of taking out execution, promise to pay the mony.

Defendant perceiving that the Plaintiff intended to serve the said Writ upon his goods, the said Basset requested the Plaintiff to stay the Execution of the said Writ till such a day, and if Basset on that day did not pay unto the Plaintiff the fifty pound in consideration of such a stay of Execution of the said Writ, and for two shillings four pence to be given to the Defendant by the Plaintiff, to renew the said Writ of Cap. the Defendant promised, if Basset by the day limited did not pay the fifty pound, that hee would pay it to the Plaintiff: And allegeth in facto, the stay of Execution, at request of the Defendant, and the giving of two shillings four pence for renewing the said Writ, and how Basset did not pay the fifty pound at the day, &c. to the damage of a hundred marks, and upon Non Assumpsit pleaded, was found for the Plaintiff, where it was resolved by Gaudy, Fenner, and Yelverton, the consideration is good, for this Cap. utlag. follows upon the original Suit of the party, so that the benefit which the Queen is to have, is by means of the party, and hee is at charge to sueing it forth, and hath the carriage of the Writ; and if the party be taken, hee shall be in execution at Suit of him that recovers, and if the Queen, by virtue of the Cap. utlag. hath any goods, shee is to satisfie the party at whose Suit the Outlawry happened. But Popham said this, that this is de gratia, and not de jure; but Judgement was entred for the Plaintiff, according to the opinion of the three Justices: And in this case it was said to be adjudged between Garnons and Layton, that if a man be taken upon a Cap. utlag. after Judgement, hee is in Execution for the party, and if hee escape, although hee was taken at the Queens Suit, yet the party hath such interest in the body, that hee shall have an escape against the Sheriff, quod nota. Yelverton. 19. and Croke 1. last publisht. 909.

Consideration good.

Case 250.

Upon forbearance of a Suit, a promise to pay.

Lea and Minne. H. 3 Jac. B. R. Assumpsit, the Plaintiff married with one Alice, Executrix of I. S. her first Husband; the Defendant was indebted to I. S. in a hundred pound, and promised and assumed to the Plaintiff, that if hee would forbear all suits against him upon the debt, which was by Obligation, till Michaelmas following, that then hee would pay the debt to the Plaintiff; the Plaintiff brought an Assumpsit upon this promise, and shewed all the matter before, and how the Defendant was not molested, vext, or compelled till Michaelmas, &c. to pay the debt: And upon Non Assumpsit pleaded, was found for the Plaintiff. But nil capiat per Billam entred, and the peremptory Exception was taken by Tanfield, Justice, for that the Plaintiff averred not the life of Alice his Wife, which was Executrix of I. S. for the promise of the Defendant, was made in respect of a debt in anothers right, which was to Alice as Executrix, and not in respect of any debt due to himself; therefore the promise follows the nature of the debt, viz. to be recovered to anothers use, viz. to the use of I. S. and shall be assets; and although it were in the power of the Plaintiff to release the debt, which had been a devastavit, yet now it appears that the true intent was to have it paid, and for non-payment thereof, according to promise, was the Action brought; therefore, for as much as the damages to be recovered go to the satisfaction of the debt due to the Testator, and upon Suit had upon the Bond, it may be pleaded in Barre; this shews and manifests the promise to be also to anothers use, and therefore hee ought to averre the life of the Wife, which was Executrix to I. S. for by her death the Action upon the

Averment of the life of a Wife, Executrix in an Action brought by the Husband.

Consideration invaluable.

the promise is determined; and although the Plaintiff cannot joyn his Wife with him in the Action, because the promise was particular and personal; yet he ought to averre the life of his Wife, because the Plaintiff shall recover nothing to his own use, quod nota, aut concessum. Yelverton, 84.

Case 251.

Smith and Smiths Case. M. 28. Eliz. B. R. One promised, That whereas I. N. was indebted to I. D. in forty pounds by Bond; that if I. D. ne implacitaret the said I. N. that if the money be not paid such a day, that I. S. would pay it to I. D. the money was not paid: And after the day I. D. brought an Action upon the Case upon the promise, and shewed, quod ipse non implacitavit, &c. Kingsmill, he cannot have his Action upon the Case till I. N. be dead, for during his life there is a time wherein he may implead him: As if I promise to another, that if he will be non-suit in his Action, which he hath against a third person, that if he doth not pay the money before such a day, that then he will pay the money there: If the day of payment be before the time, he can be non-suit, as before the Term beginneth, yet he cannot have his Action before he be non-suit, for albeit he hath not yet impleaded him, yet he may implead him in posterum; and therefore ought to shew he hath discharged the other of the Bond before his Action will lye. Clench, Justice. It is implied, that he shall never implead him, and then he is to shew the Bond discharged. Suit. That is not so, for if he sue against his promise, the other to whom the promise is made, may have an Action of the Case, and recover to the value of the summe in the Bond. Godb. p. 88. See cases 55. 70. 144. 162. 194. 283. 383.

Consideration, not so implead another.

Consideration, how to be performed.

Case 252.

Lord Stanhop and Lequestre. The Lord Stanhop brought an Action upon the Case against Matthew de Lequestre, about the Fees of the Post-master; and some Exception was to the form of the Declaration; and after motion to arrest the Judgement, it was adjudged for the Plaintiff. Latch. Rep. 88.

Pleading.

Case 253.

Wood and Witherick. The Plaintiff declares upon an Assumpsit, upon an Insimul computaverunt: The Defendant pleads Infancy, the Plaintiff replies, that it was for necessaries: But there it seemed, this Action may lye against an Infant in some Cases. Latch. 169. But in Stour and Withipools Case. Latch. 21. It was agreed, that where the Executor of an Infant doth promise to pay the debt of an Infant, in consideration of forbearance till Michaelmas (albeit the debt were for Apparel, and stuff had from a Mercer) it is not a good consideration. But if an Infant be a Tradesman, any contract for goods of his Trade; this will not binde him: And there said, if goods be delivered to an Infant to re-deliver, and he dye, and the Executor promise to re-deliver them; this is a good consideration. Latch. Rep. 22.

Insimul computaverunt.

Infant.

Executor.

Case 254.

Gowood and Binks. Trin. 37 Eliz. The Case was, a man did assume and promise I. S. in consideration that he would forbear a debt due to him

Forbearance.

Promise to pay.

Executors.

him until such a time, that hee would pay the debt if A. B. did not pay it: He that made the promise, dies, the money was not paid, an Action brought against the Executors, and adjudged to lye, albeit it were for a Collateral thing, and not for the Debt of the Testator. Owens Rep. 56, 57.

Case 255.

Request necessary.

Harrison and Mitford. Pasche. 12 Jac. Assumpsit, The Defendant promised to save the Plaintiff harmlesse cum inde requisit esset; and no special request was laid in the Count, upon a Non Assumpsit the Plaintiff had a Verdict, motion to arrest Judgement, for this Cause adjudged against the Plaintiff. See Cases 10. 34. 40. 43. 52. and many others.

Case 256.

Promise of money to a Sheriff, to execute a Writ for a friend.

Consideration unvaluable, and unlawful.

Extortion.

Bridge and Cage. M. 3 Jac. B. R. Action sur le Case, in an Assumpsit, whereas an Executor sued Execution, by an Elegit; the Defendant in Amicus Executoris, in consideration that the Sheriff would execute the Writ, and that for six pence given unto him by the Plaintiff, being Under-Sheriff of Cambridgeshire, promised to give the Plaintiff thereforo pound, and alledges in facto, that hee executed the Writ, and thereupon brought the Action: After Verdict for the Plaintiff, it was moved, that it was not any consideration to maintain the Action; for the Sheriff by his duty and oath, ought to execute the Writ; and therefore to have a promise of consideration for executing it, is not lawful, and it is quasi Extortion, and therefore ill and unlawful; and although it was alledged, that this summe promised him, is no more than what the Statute of 29 Eliz. C. 4. allows him to take for his fees, yet that will not help the Case; for that Statute onely excuseth him for his taking fees; if it be no more than what the Statute permits; whereas the Common Law did not permit him to take any thing for the executing Writs. But Warberton said, although the Statute tollerates it, that it is not punishable (as the Usury of ten pound per a hundred pound is tollerated) yet it hath been often times adjudged, that for such fees hee hath not any remedy by any Action. And Gawdy said, it is not reasonable, that for the executing of a Writ by Elegit (where peradventure the Land is not worth forty shillings) hee should have six pence for every pound of the debt: And here the giving of six pence is no sufficient consideration, being joyned with the other, which is unlawful; wherefore it was adjudged for the Defendant. Croo. 2. part 103.

Case 257.

Executor, in consideration of forbearance of a debt due from the Testater, promise to pay.

Peck and Loveden's Case. Hillary. 43 Eliz. B. R. Assumpsit, whereas T. L. the Defendants Brother was indebted unto him in eight pound, and made his Wife Executrix, and dyed, leaving Assets to his Executrix for the payment of all debts, and hee intended to sue the Executrix, to recover the eight pound secundum debitum Legis cursum, that the Defendant, in consideration hee would forbear the Executrix, promised to pay, &c. after Verdict, it was moved, that this was not any consideration; for this debt is to be intended most strong against the Plaintiff, to be a simple Contract, with which the Executrix is not chargeable, and to stay this Suit, is not any consideration: And of that opinion was all the Court; for the Suit intended, is to be intended an Action of Debt, which lyes not,

not, and so no consideration; but if hee had declared, hee intended to sue an Action upon an Assumpsit against the Executrix (as this Declaration doth not warrant it, because hee intends to recover the debt it self, which cannot be in an Action upon the Case) or that he intended to sue in Chancery for it (which is not intended here, because hee declares, hee intended to recover it per debitum Legis cursum) then peradventure this Action would have lain, for the consideration of staying the Suit was good: But, as it is here, it is not good; wherefore it was adjudged for the Defendant. Croo. 1. last publisht. 804.

Case 258.

Taylor and Foster. Hillary. 43 Eliz. B. R. Assumpsit, whereas the Defendant, in consideration that the Plaintiff would marry his Daughter, assumed to pay for him to I. S. to whom hee was indebted a hundred pound, viz. fifty pound at such a day, and fifty pound residue, at the end of the year ensuing: And because the first fifty pound was not paid, hee within the year brought the Action: And after Verdict upon Non Assumpsit, it was moved, that the Action lay not till the last day, as in debt, upon an Obligation, payable at two daies, sed non allocatur; for true it is, so it is that in debt upon an obligation, where the entire debt is to be recovered; but not in this Action, or in Covenant, where damages onely are to be recovered: It was also held, that the Action well lyes for the Plaintiff, though the hundred pound had been to be paid to a stranger, and not to himself, because the promise is unto him; wherefore it was adjudged for the Plaintiff. Croo. 1. last publisht. 807.

Consideration of Marriage, promise to pay mony for him that is to have the woman.

Case 259.

Phillips and Turner. Hillarii. 43 Eliz. B. R. Assumpsit, Error of a Judgement in Coventry, wherein the Plaintiff declares, whereas there was communication betwixt him, and one Archer, concerning the sale of certain beasts, that the Defendant assumed unto him, in consideration hee would deliver to Archer such beasts, as hee should buy, that if the said Archer bought of him any beasts for such a summe of mony to be paid, ad aliquod tempus, vel tempora tunc futura inter eos concordandum, and did not pay it accordingly, that hee would pay it; and alledgeth, that hee sold, and delivered to the said Archer twenty beasts for eight and thirty pound, whereof twenty pound to be paid in hand immediately, and the other eightéen pound at a day to come, and that A. had not paid the eighteen pound, the Defendant pleaded Non Assumpsit, and found against him, and Judgement for the Plaintiff.

Promise, that if *A.B.* did buy of him Cattle, and should not pay him, he would.

Pleading.

The first Error assigned, was, that the consideration is not alledged to be performed, for hee assumes onely to pay for those, which are sold to be paid at a future day, and here it is not sold to be paid at a future day, but part in hand, and part at a day to come. And of that opinion was Popham, that for this cause it was Error: But all the other Justices e contra; for when any part is to be paid at a day future, it is within the Assumpsit, for otherwise hee would not have given credit for any part, and the promise is not, if hee sells for payment at a future day, but tempus futurum, which is, though part be paid immediately.

Consideration not performed.

A second Error assigned, was, for that the Ven. fac. is awarded de Civitate, whereas it ought to be de vicineto Civitatis, sed non allocatur, for so are all the precedents for tryal in Cities, where no Parish or Ward is alledged. Vid. 7 *H.*4.13. 8 *H.* 5. 10.

Thirdly,

Thirdly, For that it is awarded, servientibus ad Clavam Ballivis, & Ministris Curiæ, and one of them onely returned it; but because the award was eis, & cor. cuilibet, it was held to be well enough; wherefore the Judgement was affirmed. Croo. 1. last publisht. 807.

Case 260.

Bonds delivered over to satisfie a debt. Consideration, re-delivery of them. Promise to pay the debt.

Chadwick and Sprite. P. 43 Eliz. B. R. Assumpsit, whereas one Baily was indebted unto him in five pound, and being possessed of two obligations, made by two strangers of twenty pound, delivered to the Plaintiff the said obligations, to receive the money due upon them, or to sue them in the name of Baily; and of that which hee recovered, to satisfie himself, and the residue to return back to Baily, that Baily died; and the Defendant being his Wife, in consideration that the Plaintiff would deliver unto her the said Bonds, promised to the Plaintiff to pay unto him the said five pound upon the first payment of any summes of those Bonds; and alledgeth, that the Defendant had received those summes contained in the Bonds, &c. After Verdict upon Non Assumpsit pleaded, and found for the Plaintiff, it was moved, that this is not any consideration, because by the death of Baily, who delivered them, the Authority which hee gave to the Plaintiff to sue them, is determined, and the Plaintiff hath nothing to do with them: And the Defendant hath not any benefit by the receipt of them, unlesse shee were Executrix, which is not alledged: And if shee were Executrix, the receipt of them by her is not any consideration; for shee receives but her own, and therefore there is not any consideration for the making of this promise. And of that opinion was Fenner, and relyed upon 12 H. 7. 14. & 9 Ed. 4. 19. But Gawdy and Clinch, e contra, because by this delivery, and gift of the obligations, the interest in the deeds is given unto him; although the debts themselves, which are things in Action, passe not, and hee had authority to dispose of them: And this delivery of them to the Defendant, and by her acceptance, and promise upon this consideration, whether executed, or not, is sufficient to binde her; wherefore it was adjudged for the Plaintiff. Croo. 1. last publisht. 821. See case 221.

Consideration invaluable.

Case 261.

Consideration to forbear a prosecution for Assaults, &c. Promise to keep the peace.

Rippon and Norton. M. 43 Eliz. B. R. Assumpsit, whereas there were debates between the Plaintiff, and one Rich. Norton, Son of the Defendant, and the said Richard Norton had assaulted the Plaintiff, and beat him at N. in the County of Northampton, whereupon hee complained to Sir Anthony Mildmay, a Justice of Peace there, and required the Peace, and made Oath, &c. that the Defendant knowing thereof, in consideration the Plaintiff would desist his complaint, and that his said Son should not be vexed, for that cause, assumed to the Plaintiff, that the said R. N. his Son should keep the Peace against the Plaintiff, and Walter Rippon, the Plaintiffs Son, and alledgeth in facto, that hee thereupon desisted his complaint; and that the Defendants Son was not vexed, &c. And yet notwithstanding that, the said R. N. the Defendants Son had assaulted the said W. R. his Son, and beaten, and wounded him, whereby hee lost his service, and was at great charges in his cure, whereupon hee brought this Action: The Defendant pleaded Non Assumpsit, and found against him, to his damage of twenty pound; and it was now alledged in arrest of Judgement, that an Action lyes

Pleading.

Want of consideration of a promise.

lyes not for the Father, because the Battery of the Son is not any ground of Action to the Father, unlesse hee had shewn that hee was his Servant, which is not done: And to this purpose was cited the case betwixt Levet and Haws, H. 41. Pl. 11. Where one promised to the Father, to give a hundred pound to his Son in Marriage with the Defendants Daughter, in consideration of a Joynture assured by the Plaintiff; the Action being brought by the Father for the non-payment of the hundred pound to the Son, it was adjudged not to be maintainable: So here, because there is not any damage to the Father, by the Battery of the Son, an Action lyes not for the Father: And although it were objected, that the Father was at the charge for the curing the Son of his wounds, yet because it was a thing hee was not compellable unto, it is no cause why hee should maintain this Action; wherefore by all the Justices (it being moved at several times) it was adjudged for the Defendant. Vide postea, P. Pl. 13. Croo. 1. last publisht. 849.

Case 262.

Clerke and Palady. M. 43 Eliz. Co. Banco. Assumpsit, in consideration that hee would permit the Defendant to enjoy such Land for a year, the Defendant assumed to give ten pound unto him for that year, and alledgeth in facto, that the Defendant enjoyed it by his permission, &c. After Verdict it was moved in Arrest of Judgement, that the Action lay not, because it is not shewn, what right, or title hee had to the Land to licence the Defendant to enjoy it, otherwise there is not any consideration, or cause of Action; and for this cause the Court held it to be ill: As also, for that, if it had been sufficiently alledged, then it had been a demise, and an Action of debt, and not an Assumpsit had then lain upon it; wherefore the Judgement was stayed. Croo. 1. last publisht. 859.

Consideration, to enjoy Land for a year. Premise to pay so much for it.

Case 263.

Garnons and *Hodges*. M. 44 Eliz. B. R. Assumpsit, in consideration the Plaintiff should use his indeavour, to procure the Defendants Father to assure such Land, that hee would give to the Plaintiff twenty pound, if hee procured the Father to make the assurance; and alledgeth in facto, that hee procured. &c. And that the Defendant had not paid, &c. the Defendant pleaded Non Assumpsit, and found for the Plaintiff, and after Verdict it was moved in Arrest of Judgement, that the Declaration was not good, because hee doth not alledge the place, where the procurement was, sed non allocatur; for the promise is in consideration hee should use his endeavour: And now Issue is taken upon the Assumpsit, which is Collateral, wherefore it is good enough; and it was adjudged for the Plaintiff. Croo. 1. last publisht. 906.

Promise to pay for his endeavour, to procure such a Lease from, &c.

Case 264.

Dell and Fereby. H. 44 Eliz. B. R. Error of a Judgement in Norwich in an Assumpsit. The first Error assigned, was, for that the consideration is not sufficient to maintain the Action: for it was, whereas the Plaintiff had prosecuted such a Suit in Norwich, and they were at Issue, that in consideration hee would stay ab ulteriori prosecutione *Sectæ prædictæ*, the Defendant promised him to pay all his charges, and expences laid out therein; and alledgeth in facto, that hee no further proceeded in

Forbearance of a Suit.

Consideration valuable.

that Suit; and that hee had expended therein such summes, and that the Defendant had not paid them: It was moved, that this matter was not sufficient to ground an Action; for although hee hath not proceeded in the Suit, yet hee may when hee please; so there is not any cause to binde the Defendant to pay any thing for it: And to that purpose cited a Case to be adjudged. T. 36 Eliz. rot. 52. in the Common Pleas betwéen Morse and Rois, that such a consideration was adjudged insufficient to ground an Action: But all the Court here held it to be good enough, for the staying of the tryal of a Cause is sufficient to ground an Action, especially for the charges expended, and denied the Law to be so in the Case before cited. Secondly, it was moved, that the Declaration was ill, because there was not any place shewn, where the expences were laid out, sed non allocatur; for it being in prosecutione Sectæ prædictæ; it shall be intended to be in the same Court. This also is but an inducement to the Action; wherefore the Judgement was affirmed. Croo. 1. last publisht. 868. See Cases 55. 70. 264.

Pleading.

Case 265, and 266.

Promise, that because hee had lent mony to him, he would lend mony to him.

Consideration past.

Docket and Voyell. M. 44 Eliz. C. B. Assumpsit, whereas the Defendant 10 Maii 40 Eliz. in consideration that the Plaintiff at a certain day, then past, at the Defendants request, had lent unto him thirty pound for such a time, that the Defendant assumed to lend unto the Plaintiff, upon request, thirty pound for a year, or otherwise to give him forty shillings; The Plaintiff alledgeth, that the Defendant did not lend him thirty pound, licet requisitus, &c. nor paid the said forty shillings: And it was thereupon demurred, because the consideration was past, and executed, and the consideration and promise ought to go together; or else it ought to be a consideration continuing; wherefore for this cause it was adjudged for the Defendant. Croo. 1. last publisht. 885.

Case 267.

Consideration, that he will deliver Corn, that he is bound to deliver to *W. S.* at a day, to *I. S.* before the day. *I. S.* doth promise to deliver it to *W. S.* at the day.

Riches and Bridges. P. 44 Eliz. B. R. Assumpsit, for that hée was indebted to I. S. in twenty Combs of Barley to be delivered on such a day, in consideration that hée would deliver it to the Defendant before the day, the Defendant assumed, and promised to deliver it at the day to I. S. and alledgeth in facto, that hée delivered it to the Defendant, and the Defendant had not delivered it to I. S. It was moved in Arrest of Judgement, that this was not any consideration to deliver the same Corn, which hée had received, for hée cannot have any use of it, nor any benefit by it: But the whole Court held it to be a good consideration; for in regard hée received it, and made such a promise, it shall be intended that hée had some benefit thereby, viz. that hée had the better credit to retain it in his hands; or otherwise hée would not have made such a promise. And if by any intendment it can be, the Law will well intend it; wherefore it was adjudged for the Plaintiff. Note afterwards upon a Writ of Error in the Exchequer Chamber, it was reversed for this cause, for that there was not any sufficient consideration, whereby the Law takes any regard. Croo. 1. last publisht. 883. Yelverton. 4.

Case 268.

Lea and Exelby. T. 44 Eliz. B. R. Assumpsit, whereas the Defendant

dant was possessed of such a Lease for years, the Inheritance being the Plaintiffs, in consideration the Plaintiff promised to pay unto him such a summe of mony such a day, and place, that the Defendant promised super solutionem inde, to surrender unto him his Lease, and alledgeth, that hée, at the day, and place, tendred the mony, and that the Defendant had not surrendred his Lease: The Defendant pleaded Non Assumpsit, and found against him; and it was moved in Arrest of Judgement, that the Defendant was not to make the surrender, but upon the payment of the mony, or an expresse tender and refusal: And the Plaintiff here hath alledged quod obtulit, but hée saith not, that the Defendant refused, which is material and issuable; and hée might have taken Issue upon the Refusal, if it had béen alledged: And although hée hath pleaded Non Assumpsit, yet the Declaration being ill in substance, the Defendant may well take advantage thereof. Coke, Attorney General, moved, that the Declaration was good, and there néeded not any tender and refusal to have béen alledged; for it sufficeth to alledge, that, in consideration hée assumed to pay such a summe, the Defendant assumed to surrender: So, there being an Assumpsit against an Assumpsit, it had béen well enough: But all the Court held, that if the promise had béen, in consideration hée assumed to pay such a summe, that the Defendant had assumed to surrender, that had béen sufficient, for then hée is to make his surrender, and hée ought to take his remedy against the other for the non-performance of his promise. But here it is, that hée assumed to pay, and the other assumed to surrender it upon the payment, so as hée would not trust to his promise, but when hée had paid, hée would then surrender it: And in the first Case, hée needed not alledge the performance of the promise, but here in this hée ought: And when hée saith, quod obtulit, and saith not, that the other accepted it, or refused it, his Allegation of the tender is not to any purpose; for hée shall never say, quod obtulit onely, but hée ought to plead further, that none was there to receive it, or that hée refused; or hée ought to alledge payment, and here it is matter of substance, for want whereof, the Declaration is not good; wherefore it was adjudged for the Defendant. And afterwards Coke said, that Willenhalls Case was adjudged, that tender without alledging a Refusal, was not good. Croo. 1. last publisht. 888.

Promise to surrender a Lease to him in Reversion for mony paid.

Pleading.

Case 269.

King and Hobbs. H. 45 Eliz. B. R. Assumpsit, the Plaintiff declares, whereas a Capias against the Defendant was directed to the Sheriff of the County of N. to arrest the Defendant, and the Sheriff had made his Warrant to four, & eorum cuilibet, to arrest him, whereupon hee was arrested by two of them; That the Defendant assumed, in consideration the Plaintiff would discharge him from that Arrest, to pay so much, &c. and alledgeth in facto, quod exoneravit eum, from the said Arrest; and that the Defendant had not paid, &c. After Verdict and Judgment in C. B. Error was thereof brought. First, because that this Arrest (the Warrant being made to four, & eorum cuilibet) being made by two, and not by four, or by one of them onely, is not good. But Gawdy and Yelverton held it to be well enough; for being but an Authority to make an Arrest, and to execute such a Warrant: It is not so strictly to be pursued, as an Authority to make Livery, whereby an Estate is conveyed: For it is made here to four, for the greater aid the one of the other, and therefore thrée or two may execute it very well: But otherwise it is of a

Promise, in consideration of discharge of one arrested to pay so much.

Arrest not lawful.

Letter of Attorney to make Livery. But Fenner held, that in regard that it is but an Authority, it ought to be precisely executed by four jointly, or by one onely. A second Error assigned was, because he saith, exoneravit cum of the Arrest, and he doth not shew how: But the Court held it to be well enough; for it needs not to be pleaded as a discharge of a Bond, or a Rent, which ought to be stayed, for they cannot be discharged, unlesse by deed, and it ought to be a perpetual and absolute discharge: But the discharge of an Arrest may be by Composition with the party for a time, or with the Sheriff, and by divers other means; wherefore it need not be shewn. And for this cause it was reversed. Croo. 1. last publisht. 913. case 1816. compound

Pleading.

Case 270.

Promise to pay a Rent then due.

Slack and Bowsall. T. 21 Jac. B. R. Assumpsit, whereas the Defendant was indebted unto him in five pound pro reditu ante tunc debito, that the Defendant assumed to pay that five pound quandocunque requisitus, and alledgeth in facto, that after request at such a day, year, and place, made, hee had not paid, &c. The Defendant pleaded payment, and found against him: And it was alledged in Arrest of Judgement, that the Declaration was not good, because hee doth not shew when the Rent was due, nor for what Term, nor upon what Contract; yet because the Defendant had taken notice thereof, affirming that hee had paid it, and Issue thereupon, and found against him; the Declaration is made good: But otherwise Dodridge and Houghton held, that it had not been good, wherefore it was adjudged for the Plaintiff. Note, there was not any exception taken, that the Assumpsit is to pay a summe for Rent, which is a real and special duty, as strong as upon a specialty; and in such a case this Action lyes not, without some other special cause of promise; but nothing was spoken thereto. Croo. 2. part 668.

Pleading.

Case 271.

Consideration, that he hath let his Land at anothers request. Promise, if the Tenant do not pay the Rent, that hee will.

Brookbank and Taylor. H. 21 Jac. Exchequ. Assumpsit, whereas the Plaintiff at the Defendants request, 20 April. 19 Jac. demised to one Jo. Jennings, his house in London for a year, a prædicto 20 Apr. 19 Jac. rendring fifty pound quarterly. That the Defendant promised, if the said Jennings did not pay the Rent, that hee would pay it; and alledgeth in facto, quod virtute dimissionis, hee entred the foresaid 20 Apr. 19 Jac. and was possessed, and had not paid the Rent; and that the Defendant licet requisitus, had not paid it: The Defendant pleaded Non Assumpsit, and found against him; and the Jury finde damages occasione assumpsionis prædictæ, to five pound, and Judgement thereupon, and Error thereupon in the Exchequer Chamber. The first Error assigned, because the entry is alledged to be before the Term begun: So it is a disseisin, and then no Rent is due, sed non allocatur, for although hee alledgeth an Entry, yet there is not any expulsion alledged, and so no disseisin: And the debt is due by the Contract, and the Action lyes upon it. A second Error assigned, was, because it is not alledged, that notice was given that the other had not paid, sed non allocatur, for hee at his peril is to take conusance of the non-payment, and pay the Rent, otherwise the promise is broken. Thirdly, because the Verdict assess damages occasione assumpsionis prædictæ, where it ought to be occasione non performationis promiss. prædict. for the promise is not the cause of the damages, but the non-payment thereof, sed non allocatur, for the promise is the cause: And the

Damages.

the Jury finding the Issue, and they assessing damages, although it were not found for what cause, yet it had bée well enough; wherefore the Judgement was affirmed. Croo. 2. part 684.

Case 272.

Hurford and Pile. P.16 Jac. B. R. Assumpsit, whereas I. S. was in execution for forty pound, the Defendant said, deliver I. S. out of Execution, and what it costs you, I will re-pay, whereupon I. S. was discharged by the Plaintiff: The Defendant, for Plea, saith, that after the Assumpsit, and before the Plaintiff had done any thing in that business, hée forbade him to meddle therein, and that hée would not stand to his promise, whereupon the Plaintiff demurred; and it was adjudged for the Plaintiff; for Houghton, Justice, said, that a man may discharge an Assumpsit made unto himself, but hee cannot discharge an Assumpsit made by himself: But at another day, the Defendants councel moved, that it was a good Plea, and that as long as nothing was done, it was but an Executory promise: Doderidge, if I promise to I. S. that if hee will build an house upon my Land before Michaelmas, I will pay him a hundred pound, and I countermand it before he hath done any thing concerning the house, it is a good countermand: *Houghton e contra*, but hée said that may be considered in damages, & adjournatur; and afterwards in Trin. Term, Judgement was given for the Plaintiff. Croo. 2. part 483, case, 2585.

Promise to pay upon delivery of a prisoner out of execution.

Assumpsit discharged by countermand.

Countermand of an authority and promise averred.

Case 273.

Powle and Hagger. T. 16 Jac. B. R. Error of a Judgement in B. C. in an Assumpsit, where the Defendant assumed, in consideration of divers summes paid unto him, that if Cooper affirmed at his return from beyond Sea, that hee received of the Plaintiff twenty pound, that the Defendant would pay the twenty pound, and alledgeth in facto, that Cooper returned from beyond Sea, and on such a day, year, and place, affirmed that hee received of the Plaintiff twenty pound, and that the Defendant licet requisitus, such a day, year, and place, had not paid: The Defendant pleaded Non Assumpsit, and found against him, and adjudged for the Plaintiff, and the Error assigned, for that it is not shewn before whom hee affirmed, nor that the Defendant had notice given unto him of this affirmation; for without notice given him, hée could not take cognisance thereof, nor is hée bound to pay it, sed non allocatur, for the Defendant is to take notice of this affirmation, as well as the Plaintiff; for the Plaintiff is not bound to give him notice thereof; for the fact being to be done by a stranger, and not by the Plaintiff, the Cognisance thereof lyes as well in the notice of the Defendant, as in the Plaintiff; and therefore the Plaintiff needs not to give him any notice, whereupon the Judgement was affirmed. Croo. 2. part 492. See cases 273. 280. 338. 39.

Promise, that if *A.* shall affirm that he did such a thing, to pay mony.

Case 274.

Batesby and Brooksbeck. M. 16 Jac. B. R. Assumpsit, and declares, whereas hée bargained with Sim. Batesby, to sell and deliver unto him a hundred and fifty stone of Wool, for a hundred and fourtéen pound to be paid at a certain day to come: That the Defendant, in consideration the Plaintiff would deliver the said Wool to the said S. B. became fidejussor for the said S. B. assumendo & adhuc & ibidem promittendo to the Plaintiff,

Promise to be Surety for another, to a third person, for goods to be delivered.

Plaintiff, to pay the said mony to the said Plaintiff; and alledgeth in facto, that hee trusting to the Defendants promise, delivered the said Wool to S. B. and the hundred and fourtéen pound not being paid, hée thereupon brought this Action; upon Non Assumpsit pleaded, and found for the Plaintiff, it was moved in Arrest of Judgement, that the Declaration was not good, for hée grounds the Declaration upon the Assumpsit, and there is not any Assumpsit in the Case, but that hee became fedejussor: And then it ought to have bèen shewn, that the principal had not paid it, being demanded, and so to have alledged a default in him, and afterwards a demand of the Surety: And this not being alledged, there is no default alledged; and therefore the Action lyes not against him. And of that opinion was all the Court; absente Montague; wherefore it was adjudged for the Defendant. Croo. 2. part 500.

Case 275.

Indebitatus Assumpsit.

Gardiner against Bellingham. Assumpsit, and declared that the Defendant, in consideration that hée was indebted unto the Plaintiff in ten pound four shillings ten pence, for agistiment, and feeding of certain Beasts of his on the Plaintiffs ground; and for Wheat, & aliis mercimoniis per prædict. R. habitis & receptis, did assume to pay to the Plaintiff the said debt, that hée hath not paid it; upon Issue Non Assumpsit, it was found for the Plaintiff, and seventeen pound five shillings four pence damages and costs: Error assigned, was, that there was no certain cause of the debt assigned, for it is not sufficient to say generally that hée was indebted, because that may be for Rents upon Leases, &c. yet this is certain enough, for Wares and Merchandizes, &c. are personal things, for which an Assumpsit may lye; for it requires not so much certainty, as if it were an Action of Debt upon the very Contract. Hobbart. page 7.

For Rent before due.

Case 276.

Sale of Wood, to pay for it as he sold the rest.

Holmes against Twist, in an Assumpsit, and declares, that hée was possessed of a heap of Wood, and sold him one Tun of the said Wood, and hée should pay him for it six months after, at the rate that hée should sell the rest, and shewed that hée sold and delivered unto Twist the Tun of Wood, and after sold unto one Collins, the residue, after the rate of twenty three pounds a Tun, and the Defendant paid him not the twenty three pounds according to his promise, and thereupon Judgement was given for the Plaintiff, but was reverst in the Kings Bench, because the Plaintiff had not alledged that hée had given notice to the Defendant of the sale and price of the rest, being a thing of his private knowledge, and not like the Case of a Bond to perform it afterwards; and the Judges of the Kings Bench allowed of the Reversal, and took no notice of the Judgement. Hobbart. 70.

Notice to bee given.

Case 277.

Consideration unlawful.

Worthington against Garstone. Mich. 22, 23 Eliz. Rot. 378. B. R. In an Action upon the Case, and declared, that whereas hée at the request of the Defendant, did sollicite and prosecute an Action of Trespasse between the said Garstone, Plaintiff, and John Sanders, Defendant; the said Garstone did promise to pay to the said Worthington a hundred pound, the Defendant pleaded that hee made no such promise, and it was found

found for the Plaintiff, and assessed damages to seventy pounds: And it was alledged in Arrest of Judgement, that solliciting and prosecuting of another, is not lawful, but for the Attorney, or Councillor at Law: But the Court did agrée, that it is lawful to be a Sollicitor, if it be not for maintenance. Hobbart. 93.

Case 278.

Richards against Carmavellan, Attorney of this Court. Hill. 12. Jac. Rot. 790. in an Assumpsit, and declares, that whereas hée had informed in the Exchequer, against one Milton, for ingrossing of Corn, and ready for tryal, that the Defendant in consideration the Plaintiff should not proceed in this tryal, but should desist from proceeding, and should also deliver him a note of his costs and charges expended in the Suit, did promise to pay him such his charges so expended, at his first coming into Somersetshire, and then laid the performance of the consideration on his part: And at such a day after, and before his Action, hée came to Taunton in Somersetshire, and yet the Defendant paid him not his charges, being six pound odde mony, which hée had disbursed, and made known unto him, by his note delivered (as aforesaid) And upon Non Assumpsit, it was found for the Plaintiff. Error assigned was, that the Plaintiff ought to have given notice to the Defendant of his first coming into Somersetshire, because it is a thing lying best in his own notice, and the Defendant undertook not the payment by Bond, but by Assumpsit onely, and to this opinion Warburton agréed. Hobbart. 93.

Promise, upon forbearance of Suit, to pay.

Notice to bee given.

Case 279.

Nichols against Rainbreed, in an Assumpsit, and declares, that in consideration Nichols promised to deliver the Defendant to his own use a Cow, the Defendant promised to deliver him fifty shillings, adjudged for the Plaintiff in both Courts, that the Plaintiff need not averre the delivery, for it is promise for promise, and both at once, or else they would be Nuda pacta. Hobb. page 121. 80.

Promise of delivery of one thing for another.

Case 280.

Yardley against Sir Arthur Ingram, in an Assumpsit, and declares, that Sir Edward Giles was indebted unto her a hundred fifty pound, and that shé told the Defendant that shé would arrest him for it, whereupon the Defendant, upon consideration that shé would forbear, did promise to pay so much as shé should prove due unto her by the said Sir Edward; and that thereupon shé did forbear, until this time, and though a hundred fifty pound were due, and shé can well prove it, yet the Defendant hath not, &c. Hereupon it was found for the Plaintiff, but ended by composition. Hobbart. 292.

Promise, upon forbearance, to pay what shall be proved due.

Case 280.

Provender against Wood, in an Action upon the Case, for that the Defendant assumed to the Father of the Plaintiff upon a Marriage to be solemnized betwéen the Plaintiff, and the Daughter of the Defendant, to pay him twenty pound; and it was agréed by Richardson and Yelverton, nullo contradicent. that the Action well lyes for the same; and the party to whom the benefit of a promise accrews, may bring his Action. Henley. page 30.

Promise to pay mony on a Marriage.

Case

Case 281.

Consideration, to suffer him to enter, and enjoy a house. Promise to pay the Rent.

Wentworth against Abraham, upon an Assumpsit, and declares, that the Defendant primo die Maii, Anno Dom. 1625. in consideration that the Plaintiff would permit the Defendant to re-enter into a Messuage and Croft, in which the Defendant had dwelt before, promised that hée would pay to him thirty shillings yearly, during the time hée should enjoy it; and that hée permisit ipsum re-entrare, and that hée should enjoy it a year and a half, which ended at Michaelmas, 1626. And for that hée would not pay five and forty shillings, hée, &c. And upon Non Assumpsit pleaded, it was found for the Plaintiff: And it was moved in Arrest of Judgement by Davenport, that by computation of time, it is not a year and a half since the Assumpsit was made: And because Debt doth not lye, for that in the Declaration it is said, permisit ipsum re-entrare, and doth not say what time, which was naught by all but Hutton, who said, so long as you shall occupy the Land, you shall pay annually, &c. that hée may demand half a years Rent; But the whole Court against him; so the Judgement pro hoc tempore was stayed. Hetley. page 53.

Pleading.

Case 282.

Consideration. Delivery of goods. Promise to pay for them.

Traver (in an Action upon the Case) against the Lord Bridgwater and his Wife Administratrix of T. D. her Husband deceased, for that the said T. D. in consideration that the said Travers tradidisset & deliberasset to the said T. D. divers Merchandizes, hee promised to pay, &c. the Defendant pleads, that the said T. D. Non Assumpsit, and it was found for the Plaintiff, and moved in Arrest of Judgement; that it was no consideration; and adjudged for the Defendant; for when hee said, tradidisset & deliberasset, that they might be his own goods, otherwise if hée had said vendidisset de novo, Ed. 4. 19. Accordingly. Hetley. 62.

Case 283.

Promise to pay mony upon forbearance to sue. *Paululum temporis.* Certainty, Incertainty.

Palmers Case, it was held by the Court; if a man assume to pay mony due, in consideration to forbear to sue him paululum temporis; and if hée forbear for a convenient time; it is a sufficient consideration upon which to ground an Assumpsit. The Case was between Palmer and Rouse. P. 40 Eliz. Rot. 537. The Plaintiff counts, that I. S. was indebted to him upon an Obligation, and hee forfeited it, and dyes, and made the Defendant his Executor; and that the Plaintiff was forced to sue the Obligation, and in consideration of the promises; the Defendant assumed, that if the Plaintiff would forbear him pro brevi tempore, that hée would pay him, and the Plaintiff fidem adhibens, &c. forbore four years to sue him, and said that the Defendant had Assets; The Defendant said, absque hoc, that hee had Assets; and upon that the Plaintiff demurred, and adjudged for him, for the alledging of Assets in the Court is surplusage; and now the consideration was sufficient for hee had counted hée had forbore for four years. Hetleys. 62.

Case 284.

Several Assumpsits.

Gammon against Malbarn in an Assumpsit to pay thirty four pound, which accrewed upon several promises. First, hee surmised, that one was indebted

indebted to him in twelve pound; and that hee would trust him more; the Defendant came and prayed him to trust him, and if hee would, hee would pay him the old debt; and whatsoever hee should be in arrear more: If it did not exceed a hundred pound, he would pay, and shews how he afterwards sold to him divers peces of flesh at reasonable prices; and that hee lent him three pound, which hee promised to pay; and then hee came and requested him to pay the whole thirty four pound, but hee would not pay the ninetéen pound for the price of flesh, nor the twelve pound, &c. Hendon moved an Arrest of Judgement (Non Assumpsit being found for the Plaintiff) because that hee doth not alledge before, that the flesh that hee sold amounted to the price of ninetéen pound; and because hee makes but one request for several debts, where it ought to have been several; but it was thought good, and adjourned. Hetley. 84. Request.

Case 285.

Holford against Gibbes, and his Wife (in an Action upon the Case) who was Administratrix upon a promise of the Intestate, which appears in the Declaration, that it was sixtéen years since the promise made. And Sir Thomas Crew prayed to be discharged of the Declaration, upon the Statute of 21 Jac. cap. 16. But the Court held, that if upon the shewing of the Plaintiff himself, the Action appears to be out of the Statute of Limitations, then the Defendant ought to plead the Statute, and hee shall be aided by the Averment. Hetley. 85. Against an Executor. Limitation of time.

Case 286.

Bible against Cunningham, in an Action upon the Case, and declares, that there was a communication betwéen him and the Defendant of the sale of a Bank, and an Acre of Land, and that in consideration thereof, and that the Plaintiff would assure and deliver to the Defendant possession of all the Bank, as soon as hee could, and that at all times upon request to be made to the Plaintiff by the Defendant, the Plaintiff would become bound in a Statute Merchant to make the assurance to the Defendant: The Defendant promised to pay to the Plaintiff seventy two pound at the end of three years from Michaelmas next ensuing; and that in the mean time for the forbearance, hee would give after eight pound in the hundred: And that hee became bound in a Statute Merchant for the payment of seventy two pound; and hee alledges, that the Defendant did not become bound in the Statute: But that hee himself delivered possession as soon as hee could: And upon Non Assumpsit pleaded, it was found for the Plaintiff; and the Court agréed that the Action well lyes. Hetley. 89. Consideration, to give him possession of Land, and assure it. Promise to pay mony.

Case 287.

Holmes against Chenie, in an Assumpsit, the Plaintiff declares, that there was an Account between him and the Defendant, of divers summes of mony, and it was found that the Defendant owed to the Plaintiff three pound; and upon that he promised upon request to pay it, and upon Non Assumpsit pleaded, it was found for the Plaintiff, and moved in Arrest of Judgement, that the Plaintiff doth not shew for what thing the mony was due; nevertheleste Judgement was given for the Plaintiff. Hetley. 106. 113. Upon an Account, and mony due.

Case 288.

Consideration to procure one to part with his Term. Promise of mony.

Brown against Hancock, in an Assumpsit, and declares, that whereas the tenth of May, 16 Jac. there were some controversies between Charls Nichols, and the Brother of the Defendant, concerning arrearages of Rent, and it was desired that Nichols would part with his Term; and hee should have ninetéen pound, a cloak, and a Gelding for his Term, which hee refused; Afterwards the Defendant, in consideration that the Plaintiff would labour with the same Nichols, to take the offer assumed, that whatsoever hee undertook, hee would perform, and save him harmlesse for any thing hee should do in that businesse; and then hee said, that hee procured the said Nichols to resign his Term, and accept the offer, which the Defendant did not perform; and also that the Plaintiff obliged himself for the performance of Covenants (to the said Charls Nichols) in a Bond of fifty pound; and afterwards Nichols filed a Bill of Debt for the mony, and compelled him to pay it: And upon Non Assumpsit pleaded it was found for the Plaintiff. Hetley. 111. Motion to arrest Judgement. Et adjournat.

Case 289.

Promise to repay what hee should lay out in such a business.

Hutchinson against Chester, in an Action upon the Case; and declares how the Plaintiff was doing certain businesse for the Defendant; the Defendant said to him, do it, and Ile repay you whatsoever you lay out, and shews that hee had expended four pound, and doth not shew in certain and particular circa quid; and for that cause it was held naught. Hetley. 122.

Case 290.

Promise to stand to an Award made before.

Bragg and Bristows Case. It was agréed by the Court, that where there was a difference betwéen one and another, who had married his Daughter, which difference was referred to a friend to compound: And hée ordered, that the Father and the Son should enter into a Bond to pay so much to the Daughter; and afterwards the Son promised to do it: That here might be a sufficient consideration betwéen Father and Son for the making of that promise. Hetley. 126.

Case. 291.

Promise to pay for soliciting a business.

Wilson against Peck, in an Action upon the Case; and declares, that the Defendant, in consideration that the Plaintiff should be his Solicitor in several Suits depending against him in this Court; assumed that hée would give him for his pains as much as hée deserved; and hée said, that hée deserved five marks; and upon Non Assumpsit pleaded, it was found for the Plaintiff; and it was moved, that the consideration was against Law; but afterwards the parties agréed. Hetley. 129.

Case 292.

Promise to a Sheriff, if hee will let go one that is in execution, that hee will defend him. Promise unlawful.

Royes Case. A Sheriff had taken one by capias ad satisfac. a stranger assumes to him, that if hée will let him go at large, that hée would pay him what damages hée should sustain thereby: No Action upon the Case will lye for that promise, because it is against the Common Law. Anno 23 H.6. 2 H.5. If a man oblige another in a Bond, not to follow his Trade, it is void. Hetley. 175.

Case

Case 293.

Darleys Case. Serjeant Atthew shewed to the Court, that an Action upon the Case was brought by the Sheriff of S. and declares, that the Defendant assumed, that if hee would put such an one in execution into the Castle of — which hee had recovered against him to save him harmlesse; and shews that hee did take him in execution, and for that that hee was indicted for a forcible entry, and sues in the Starre Chamber, ad dampnum five hundred pound: And the Court seemed, that it was not a sufficient consideration, for it was no more than by his office, hee ought to do: But if it was upon another matter, otherwise it should be: And for that they said, the Serjeant might have demurred to the Defendant. Hetley. 175.

Promise of money to the Sheriff, to put one in prison upon a Writ.

Case 294.

Hadues against Levit; an Action upon the Case was brought, that in consideration the Plaintiff would consent that his Son should marry the Daughter of the Defendant, and that after the Coverture upon request of the Defendant, the Plaintiff shall make a Joynture of twenty pound to the Wife; That the Defendant should give two hundred pound to the Son in Marriage, they are married, the mony is not paid, the Father of the Son brings his Action, and shews how hee is endamaged, &c. It was adjudged, that where two Fathers promise upon the Marriage between the Daughter of the one, and the Son of the other, that the Father of the Son shall give a hundred pound stock, and the Father of the Daughter a hundred pound mony: The mony was paid, and the stock not delivered; and the Action was maintained by the Father, and is maintainable. Hetley. 176.

Promise upon a Marriage and Joynture made, to pay mony.

Case 295.

Herrenden (in an Assumpsit) against Margaret Palmer, Administratrix of her Husband, and declares that her Husband had bought of him Gold, Silver, and Pearl, and was indebted to him in two hundred pound, for the afore-mentioned Gold, &c. and shee after his death, had likewise bought of him Pearl for twenty seven pound, and that upon account shee was found indebted both these summes to him, and promised payment; upon Non Assumpsit, Judgement was given for the Plaintiff, Error assigned, was, that the Defendant was to be charged in two manners; one in her own Right, the other as Administratrix; and therefore Judgement was reverst. Hobbart. 121.

Two Actions of several natures.

Case 296.

Brinsley against Partridge. In an Action upon Assumpsit, and declared, that hee accounted with the Defendant for divers summes of mony due to the Plaintiff, whereupon the Defendant was found upon the same account in arrearages to the Plaintiff fifty seventy pound: The Defendant, in consideration thereof, promised to pay the Plaintiff the odde seven pound at a certain day, which hee did not, to his damage, &c. The Defendant pleaded Non Assumpsit, whereupon the Plaintiff had Judgement, which was confirmed, because by the Accounts the debt was confessed. Hobbart. 121. Jay. 88.

Upon Account *Indebitatus*.

Case 297.

Promise to pay mony upon request, if he will marry *I. S.*

Request to be shewn.

Pasch. 15 Jac. One brought an Action upon the Case, and counted that the Defendant (in consideration that the Plaintiff would take such a woman to his wife) promised to pay twenty pound when hee should be thereto requested after the Marriage; and that the Plaintiff such a day had married the said woman; and the Defendant (though often requested) did not pay the aforesaid twenty pound: And it was moved in Arrest of Judgement, that hee had not shewn any particular request: But yet Judgement was affirmed for the Plaintiff. Hutton. page 2.

Case 298.

Indebitatus upon account.

Bigg against Malin. (In an Action upon the Case) as Administrator, and counts, that whereas the Intestate was indebted unto him in ten pounds; and the Defendant was also indebted unto him in forty shillings, they accounted; and upon account the Debt being twelve pound, the Defendant being Administrator, did assume and promise to pay it, & licet sæpius requisitus, non solvit; and upon Non Assumpsit pleaded, it was found for the Plaintiff, and the Plaintiff had Judgement. Hutton. 27.

Case 299.

Promise to pay upon forbearance of a Suit.

Trin. 28 Eliz. Rot. 329. Smith's Case. Smith assumed upon himself, that where I. S. was indebted to I. D. in an Obligation of forty pound, that if I. D. would not implead the said I. N. that then if the mony were not paid at such a day, that then hee, viz. the said Smith would pay the mony; upon which Assumpsit after the day I. D. brought his Action upon the Case, and did set forth in his Declaration, that hee did not implead the said I. N. And it was moved by Kingsmill, that hee could not have his Action, until I. N. be dead, for so long as hee lives I. D. hath time to implead him. As if a man promiseth another, that hee will be named in his Action, that hee hath against a third person; and if the third person pay not the mony at such a day, then hee will; hee cannot sue unlesse hee shews hee hath discharged the other of the Obligation: And after the Case was moved again, and the Plaintiff brought the Obligation in Court, which was entred, so that the Plaintiff could not implead I. N. imposterum, for which Judgement was entred for the Plaintiff. Owen. 29.

Case 300.

Consideration, to suffer him to enjoy Land.

Promise to pay mony.

Hunt's Case. Hill. 30 Eliz. R. 17. 32. Hunt brought an Action of the Case against Tourney, and declared, that hee being seized of Lands in Swainton in Nort. in fee, secundum consuetudinem Manneri: The Defendant did promise to the Plaintiff, in consideration hee would permit to occupy the same for the space of five years, that hee would pay him at the Feast of All Saints next coming, and so yearly twenty pounds at the Feasts of the Annunciation, and All Saints, by equal portions, during the Term aforesaid, and alledged, that hee had enjoyed the Lands by the space of a year and a half, and so brought his Action on the Assumpsit; And the Plaintiff had Judgement by the Court. Owen. 42.

Case

Case 301, 302.

Collins against Willis. The Father makes a promise to Willis, that if he would marry his Daughter, to pay him fourscore pound for her portion, but Willis demanded a hundred pound, or else did refuse to marry her, whereupon the Daughter prayed her Father to pay the hundred pound, and in consideration thereof, she did assure him to pay him twenty pound back again: The hundred pound is paid, and the Marriage took effect; and the Father brought his Action upon the Case against the Husband and the Wife, for the twenty pound. Gawdy and Fenner said, that the Action would lye; but Popham held the consideration void. Owen. 63. Mich. 39 Eliz. See case 289.

The Daughter doth promise to pay back part of her portion, if the Father will make it up so much.

Void Consideration.

Case 303.

Mores against Conham. Mich. 7 Jac. in C. B. In an Action on the Case upon an Assumpsit, the Plaintiff declared, that Lover was indebted to him in a certain summe, for which he pawned to the Plaintiff certain goods to the value of a hundred pound, and the Defendant promised the Plaintiff to pay the debt, if he would deliver the pawn, and hereupon the Defendant demurred, and two points were moved, one to the form, and the other to the matter. First, the Plaintiff declared, the Assumpsit was pro diversis bonis & catallis, delivered to Lover, without shewing what goods, or of what kinde, for this is the consideration of the Contract, and therefore ought to be pleaded in certainty: But resolved by the Court, that the Plea and the Consideration were good; whereupon Judgement was given for the Plaintiff. Owen. 123. See case 4.

Promise to pay a debt upon the delivery of a pledge left for it.

Pleading.

Case 304, and 305.

Pasch. 26 Eliz. Inter. Mich. 25, 26 Eliz. In Com. B. Dorothy Richards Executrix of A. her former Husband, brought an Action upon the Case, upon a promise against Bartlet, and declared, that in consideration of two weighs of Corn delivered by the Testator to the Defendant, he did promise to pay to the Plaintiff ten pound, to which the Defendant said, that after the Assumpsit, the Plaintiff, in consideration that the said two weighs were drowned by Tempest, and in consideration that the Defendant would pay to the Plaintiff for every twenty shillings of the said ten pound, three shillings four pence, scil. in toto thirty three shillings four pence, did discharge the said Defendant of the said promise, and averred further, that he hath been alwaies ready to pay the said summe newly agreed, upon which there was a demurre: And the opinion of the whole Court was clearly for the Plaintiff; so Judgement was given for the Plaintiff. Leonard, page 19.

Sale of Barley for mony.

Discharge of an Assumpsit.

Case 306.

Cook and Songat's Case. P. 30 Eliz. In an Action upon the Case, the Plaintiff declared, quod cum quedam lis, and controversie had been moved betwixt the Plaintiff, Lord of the Manor, &c. and the Defendant claiming certain Lands, parcell of the said Manor, to hold it by Coppy, and whereas both parties submitted themselves to the Judgment and Arbitrement of I. S. Councellor at Law, concerning the said Land, and

Promise to perform what shall be set down by *I. S.* about such a difference.

Reciprocal Promises.

and the title of the Defendant to it. The Defendant, in consideration that the Plaintiff promised to him, that if the said I. S. should adjudge the said Coppy to be good and sufficient for the Title of the Defendant, that then hee would suffer the Defendant to enjoy it without molestation: The Defendant promised, that if hee adjudged to the contrary, that hee would surrender the said Land to the Plaintiff without any Suit; and shewed further, that I. S. had awarded the said Coppy utterly insufficient; yet the Defendant did not surrender possession of the Land, &c. And after it was argued whether the consideration was good: It was adjudged good by Gawdy; whereupon Judgement was given for the Plaintiff. Leonard. 103.

Case 307.

Consideration, to compound for, and discharge a debt owing by A. to B.

Premise to save him harmless from it.

Pleading.

Notice to bee given.

Atkinson and Rolfe's Case. Mich. 30 Eliz. In an Action upon the Case, the Plaintiff declared, that the Defendant, in consideration of the love which hee bore unto A. his Father, did promise, that if the Plaintiff would procure a discharge of a debt of I. S. which his said Father owed to I. S. that hee would save the Plaintiff harmlesse against the said I. S. and declared further, that hee had discharged the Father of the Defendant from the said debt, and is become bounden to the said I. S. in an Obligation for the payment of the said debt; upon which Obligation the said I. S. hath sued the Plaintiff, and hath recovered, and had execution accordingly, and so hath not been saved harmlesse, &c. It was objected, that the Declaration was not good, because the Plaintiff did not shew that hee had given notice to the Defendant of the said Obligation, but that was not allowed, for the Declaration was holden good; it was adjourned. Leonard. 105.

Case 308.

Promise to content one for work done for him.

Notice to bee given.

Dallaby against Hassels. Pasch. 30 Eliz. In an Action upon the Case, the Plaintiff declared, that in consideration the Defendant had retained him to go from London to Paris to merchandize divers goods to the profit of the Defendant, promised to give him so much as should content him, and also to give him all and every summe of mony, which hee should there expend in his affairs, and further declared, that hee was contented to have twenty five pounds for his labour, which the Defendant refused to pay: And exception was taken to the Declaration, because there is not any place or time of the notification of his contentment, for the same is traversable; yet Judgement was given for the Plaintiff. Leonard. 123.

Case 309.

Upon an *Indebitatus Assumpsit.*

Discharge of Assumpsit by a Bond given.

Jennings against Winche. Trin. 32 Eliz. In an Assumpsit, the Plaintiff declared upon an Assumpsit, by the Defendant primo Maii, 32 Eliz. and counted upon a Mutuatus for twenty shillings, and an Indebitatus for four pounds: The Defendant pleaded, that hee being indebted to the Plaintiff in five pounds, and W. S. in another five pounds, they became bounden to the Plaintiff in twenty pounds; for the payment of ten pounds in satisfaction of the said summe of five pounds, and five pounds; and that the Obligation was sealed before the day of the Assumpsit, supposed and added, that the same is the same debt, and that the Obligation was made for the said debt; and by the opinion of the whole Court, the same cannot be a good Plea. Leonard. 154. See case 245.

Case

Case 310.

Mich. 31 Eliz. Com. B. In an Action upon the Case the Plaintiff declared, that hée had delivered to the Defendant diversa bona ad valentiam ten pounds, the Defendant, in consideration thereof, did promise to pay the Plaintiff the debt owing, pro bonis prædictis, and did not shew that the Defendant bought the said goods of the Plaintiff, and so it doth not appear that there was any debt; and then a promise to pay it is méerly void, which was agréed by the whole Court. Leonard. 157.

Promise to pay for Goods bought.

Case 311.

Kirby against Eccles. Trin. 31 Eliz. In an Action upon the Case, the Plaintiff declared, quod cum quædam communicatio fuisset, betwixt the Plaintiff, and one Cowper, that Cowper should mast certain Hoggs for the Plaintiff, the Defendant did promise, that in consideration that the Plaintiff should give unto him thrée shillings four pence for the fatting of every Hogg, that the said Hoggs should be re-delivered to him well fatted, to which promise and warranty, the Plaintiff giving faith, delivered to the said Cowper one hundred and fifty Hoggs to be masted; and that one hundred of them were delivered back, but the residue were not: And it was moved, that there is not any consideration, for which the Defendant should be charged with any promise, but, upon the warranty it was thought maintainable by Clench and Wray, but Gawdy was of a contrary opinion. Leonard. 186.

Promise to fat Hoggs. Promise to pay so much for it.

Case 312.

Bishop and Harecourts. Mich. 32, 33 Eliz. In an Action upon the Case, the Plaintiff declared, that the fifth of June, 30 Eliz. The Defendant (in consideration that the Plaintiff the same day, and year, sold and delivered to the Defendant a Horse) did promise to pay the Plaintiff a hundred pound in Trinity Term then next ensuing, and shewed that the Term began septem Junii after; and upon Non Assumpsit pleaded, it was found for the Plaintiff, and afterwards Judgement was given for the Plaintiff. Leonard. 210.

Promise of money for a horse.

Case 313.

Short against Short. Pasch. 26 Eliz. In an Action upon the Case upon Assumpsit to pay mony to the Plaintiff upon request: It was agréed, that the Plaintiff, by way of Declaration, ought to allege an actual Request, and at what place, and at what day the Request was made: And it is not sufficient to say, as in an Action of Debt, licet sæpius requisitus, &c. and so it was adjudged. Leonard. 287.

Promise to pay money on request. Request to be made.

Case 314.

Mich. 26, & 27 Eliz. The Case was, A woman seized of a Rent Charge for life, took a Husband, the Rent was arrear, the Wife dyed; The Tenant of the Land charged, promised to pay the Rent, in consideration that the Rent was behinde, &c. and some were of opinion, because that this Rent is due and payable by a Deed, that this Action of the Case upon

For a Rent charge for life.

upon Assumpsit will not lye, no more than if the Obliger will promise to the Obligée to pay the mony due by the Obligation; an Action doth not lye upon the promise, but upon the Obligation: But it was holden by the whole Court, that the Action did well lye; and so Judgement was given for the Plaintiff. Leonard. 293.

Case 315.

Amongst Merchants.

Hoskins and Stupers. Mich. 32 Eliz. In an Action upon the Case, the Plaintiff declared, that whereas the Plaintiff had sold to the Defendant a thousand couple of Newland-Fishes to the use of the Defendant, and in consideration hée should ship, and should bring and carry the Adventure of them from Bristoll in portum of St. Lucar, and should carry back again the value of the said Fish to London, or Bristoll, secundum usum Mercatorum: The Defendant did promise, that upon the arrival of the said Fish, in portum of Saint Lucar, hée would give to the Plaintiff a hundred and twelve pound, and said that hée arrived with the same Fish ad portum of Saint Lucar, and that afterwards hee arrived with goods of the value of the said Fish, ad portum of London, secundum usum Mercatorum. It was holden by all the Judges, that in portum, and ad portum is all one: And afterwards Judgement was given for the Plaintiff. Leon. 335.

Pleading.

Case 316.

Promise to the Sheriff, that if he put into the Warrant such a special Bayliff, that hee shall not be troubled for any escape.

Palmer against Smalbrooke. Trin. 30 Eliz. In an Action upon the Case, the Plaintiff declared, that the Defendant had recovered a certain debt against A. and thereupon purchased a Writ of Capias against A. to take his body, and delivered the said Capias to the Plaintiff, being then Sheriff, and prayed a Warrant for the serving of the said Capias, and that hee would name in it one B. for special Bayliff, and promised the Plaintiff, that if B. arrested A. by force of the said Capias, and suffered him to escape, that hee would not sue the Plaintiff for the escape; and shewed further, that hee made a Warrant according to the said Capias, and therein named the said B. for his special Bayliff, who arrested A. accordingly, and afterwards suffered him to escape: And the Defendant, notwithstanding his promise aforesaid, sued the Plaintiff for the said escape: And it was found for the Plaintiff, and afterwards Judgement was given for the Plaintiff. Leonard. 132. and Owen. 98.

Case 317.

Promise of mony for service past, not good.

Mich. 2 Car. 1. Franklin against Bradell. Franklin, a woman servant brought an Action upon the Case, upon a promise against John Bradell; and counts, that whereas shée had served the Defendant and his Wife, and done to them loyal service, the Defendant, after the death of his Wife, in consideration of the service which the Plaintiff had done to the Defendant and his Wife, promised to pay her thirteen shillings four pence upon request, and alledged request, and non-payment, and after Verdict for the Plaintiff; Judgement was given for the Plaintiff. Hutton. page 84.

Case 318.

Consideration to defend a suit in being. Promise to pay the charges.

Trin. 3 Car. 1. Rot. Humbleton against Buck. Simon Humbleton brought an Action upon the Case against Buck, and counted, that whereas a Controversie was between the Inhabitants and Tenants of Fletam, and

and one Palmer, for, and concerning the having of Common in one parcel of Land, which was a Sea-bank, in which they had Common of pasture, for feeding of Cattle, and also by taking and cutting the grasse: And whereas the said Palmer had brought an Action of Trespasse against the now Plaintiff, for entry made by him in the said Close; and for taking his grasse, pretending that the said Land in which hee claimed Common, was his, several, and free from their claim of Common, the Defendant, in consideration that the Plaintiff had given to him a Jugge of Beer, and that hee at the request of the Defendant would prosecute and defend the said Suit, for the maintenance of their Common against the said Palmer, until the determination thereof, hee promised to pay to the Plaintiff one moyety of his Charges, and over and besides twenty pounds, and that thereupon hee defended the said Suit, and pleaded not guilty; and at the tryal thereof, Palmer was non-suited, and that it was for the maintenance of the Common, and that hee expended in defence and prosecution of the said Suit, forty pounds. Pleading.

The Defendant confessed all the Inducement, and also a promise submodo, and said, that the said Palmer had brought Trespasse, to which the Plaintiff had pleaded not guilty, absque hoc, that the Suit and Tryal was for the said Common; and Issue being joyned, it was found for the Plaintiff, and damages to twenty pounds. Hutton, page 89.

Case 319.

Mich. 4 Car. 1. Mackerney against Ewrin. Richard Mackerney brought an Action upon the Case against Jeffery Ewrin, and counts, that whereas one I. S. was indebted to the Plaintiff in seven pounds four shillings, for pasture, feeding, and Oats for an Horse kept in the Stable of the Plaintiff; The Defendant, in consideration that the Plaintiff at his request would deliver the Horse to him, to the use of the said John S. promised to pay the said seven pounds four shillings; and upon Non Assumpsit pleaded; and Verdict for the Plaintiff, it was adjudged a good consideration. Hutton. page 101. Consideration that hee was at charge to keep a horse, and should deliver him to I. S. That I. S. doth promise to pay for it.

Case 320.

Mich. 5 Car. 1. Bill against Lake. Francis Bill brought an Action upon the Case against Sir Arthur Lake, and counted, that whereas at the special instance of Lettice, wife of the Defendant, hee had provided for the said Lettice a Taffety-Robe, the Defendant did assume to pay as much as it was worth upon request; and so in like manner for providing of Linnen, stuffe, &c. and making of several Garments for the Wife, and averrs that the several things bought amount to such a summe, and the making thereof was worth such a summe, which in toto, &c. and alledges the request; and averres, that they were necessary Vestiments, and convenient for the degree of the Wife, and after the making of them hee had delivered them to the Wife; the Defendant pleaded the Statute of 21 of King James for Limitation, and said, that the Plaintiff within six years after the promise supposed, nor within three years after the end of the Parliament, had not prosecuted any Original, or any Action upon this promise and Assumption, whereupon the Plaintiff demurred: But the Court inclined, that no Action of Debt lay against Sir Arthur upon this Assumpsit; but onely an Action of the Case upon the request. Hutton, page 105. Promise to pay for a womans Cloaths, that hath a husband. Limitation of Actions. Request.

Case 321.

Against an Executor. Promise to pay a debt upon forbearance.

Mich. 4 Car. I. Treford against Holmes. Treford brought an Action upon the Case against Holmes, as Executor, and counted, that whereas the Testator was indebted to the Plaintiff, the Defendant, in consideration that the Plaintiff would forbear the said debt for a reasonable time, assumed to pay it: And this promise was made in December, and he shews forbearance until March next, and upon Non Assumpsit pleaded, and Verdict for the Plaintiff, the Plaintiff had Judgement. Hutton. page 108.

Case 322.

Goods delivered to satisfie a debt in part, promise upon forbearance to pay the rest of it.

Martin and Vaux. Trin. 40 Eliz. C.B. Rot. 529. An Action upon the Case, and declares, that with his Testator, &c. hee delivered certain wares to I. T. and I. H. &c. ad compatum inde reddendum by I. T. and after that, &c. I. T. goeth over Seas, and the Testator dyeth, and that after, &c. I. T. sent into England a hundred Kintals of Wood, &c. to satisfie the Plaintiff of his account, which Wood came to the hand of the Defendant, who delivers a parcel of it to the Plaintiff, in satisfaction of part of the Account, &c. and the Defendant superfs assumpsit, that if the Plaintiff would forbear the said I. T. for the residue, until his return into England, which hee hoped to be within three months, or thereabouts, that then the Defendant would satisfie the Plaintiff all that should appear to be due upon account, by virtue of which he hath forborne three months, and that three thousand pound was due, and in arrear upon the said account, which the Defendant hath not paid per quod actio, &c. And upon the Non Assumpsit, it was found against the Defendant, &c. and in Arrest of Judgement divers exceptions were taken to the Declaration, but Judgement was given for the Plaintiff. Noy, page 8.

Case 323, 324.

Promise of mony upon Marriage. Uncertainty.

Weeks and Tybald. Mich. 2 Jac. Rot. 364. In an Assumpsit the Plaintiff alledges, that whereas there was a communication of Marriage between the Plaintiff, and the Daughter of the Defendant, that the Defendant upon speech between the Father of the Plaintiff, and the Defendant; for free liberty to the Plaintiff to come to the house of the Defendant, to wooe his Daughter, the Defendant then and there affirmed and publisht, that he would give a hundred pound to him that should marry his Daughter with his consent, &c. By the Court the Action doth not lie, for asseruit & publicavit doth not make words that include a promise. It is not averred nor declared to whom the words were spoken, and it is not reason that the Defendant should be bound by such general words spoken, to excite Suitors. Noy. 11.

Case 325.

Promise of mony to one that shall go to the Sheriff to get him to arrest upon execution.

Bagshaw and Saltar. Hill. 1 Car. 1. In an Assumpsit, the Plaintiff declares, that whereas John Green was indebted to the Defendant in thirty pounds, and that the Defendant has sued and recovered against Green, and in Trin. 18 Jac. hath a Cap. ad satisfac. against Green, directed to the Sheriff; and upon communication between the Plaintiff and the Defendant; the Defendant promised, that if the Plaintiff would go to the

the Sheriff, and procure a special Warrant, and arrest John Green, that hee would give him forty shillings; and averred that hee had done so, and had often requested the same of the Defendant; and Issue joyned, upon Non Assumpsit, it is found for the Plaintiff: And it was moved in Arrest of Judgement, and so ruled by the Court, that the Assumpsit is void, by 43 H. 6. And Judgement quod quærens nil capiat. But one Audleys Case was vouched, and agreed, that an Assumpsit made to a stranger, to go and help the Sheriff to make execution, is good, and an Assumpsit lyes. Noy. 76.

Case. 326.

Cowlin against Cook. In an Action upon the Case, and declares, that whereas the Defendant was obliged to him in a hundred pound, and that hee intended to sue him for it, that the Defendant, in consideration the Plaintiff would deferre the payment of the mony aforesaid, and not sue him upon that obligation, promised that hee would pay him, and assumed upon that. It is not a good consideration, for hee may forbear and deferre, &c. for a day onely, &c. as 19 Jac. Kebb's Case. A Lease at will is not a good consideration, for the Lessee may determine it presently: But here deferring shall be intended during all the life time of the Obligee: So by the Court in our Case, it is a good consideration. Noy. 83.

Case 327.

Alcock against Blowfield. P. 3 Car. 1. B. R. Rot. 213. A. had recovered fifty pound against M. and then B. promised, that if A. would forbear the execution of it, that hee would pay to him fifty pound at Midsummer next, or a hundred pound after, if it be not paid then, &c. when it should be reasonably requested; and A. averres non-payment, with a licet sæpius requisitus (but doth not averre a request expressly) and recovered: And upon Error, it was agreed, that the request ought to have been expressly averred, because that was issuable, for the promise being made by a stranger, there is not any duty before request: But otherwise when the party himself which is indebted promised to pay; there a licet sæpius requisitus shall suffice, because there was a duty before, and without the promise: But in the case of a stranger it is Nudum Pactum, and no consideration till a request made. Noy. 95.

Promise upon forbearance, to pay a debt.

Special Request to bee shewed.

Case 328.

Scatborrow against Lyrius. P. 3 Car. 1. B. R. Rot. 213. L. being in a Ship upon the Sea, B. (who was in it) was reputed an Agent and Factor, borrows a hundred pound of L. upon Bottomage, (that is) when the mony is paid upon the Keel of the Ship, and the Ship obliged to the payment of it: And if it be not paid at the time, &c. that hee that lends the mony shall have the Ship; and that was allowed to be a good and necessary custome by all: And it was agreed by the Justices, that if the Master, Factor, Purser, or hee that is reputed owner of the Ship borrows mony in such a manner, for the necessaries of the Ship, that binds the owner of the Ship, although that the mony be not so imployed in truth, and the owner hath his remedy against him that hee so put in trust. Noy. 95.

Amongst Merchants.

Case 329.

Consideration. Sale of goods for so much. Promise not to use his Trade. Promise against Law.

Jellit against Broad. M. 18. Jac. B. R. I. sells goods to B. for two hundred pound, and in consideration of that bargain, B. promiseth that he will not exercise the Trade of a Dearcer in such a Village, &c. But after B. used it there, and I. brought an Action upon the Case, and resolved by the Court, that it well lyes; for it was a voluntary promise for a good consideration, and is restrained to a place; otherwise if it had been a general restraint, or upon a co-action, or without a consideration, it had been void; for it is said by all the Justices, that that condition, or general restraint, &c. is against the Law and Liberty of a Subject, by Magna Charta, cap. 38. And contrary to the Common Law. Noy. 98. See case 386.

Case 330.

Insimul computaverunt, for arrearages of Rent. Request.

Murton against Burtley. 18 Jac. In Exchequer Chamber, in an Action upon a promise to pay arrearages of Rent, upon an Insimul computaverunt, when he should be thereunto requested; and hath not expressly alledged a request, and yet alledged goods, for the arrearages are due before the request; and an Action of Debt lyes for them: And also the being upon an Action is a request sufficient: That was moved in arrest of Judgement, yet Judgement was for the Plaintiff: But otherwise, if it were to do a Collateral thing, which was not a present duty. Noy. 98.

Case 331.

Carrier promise to carry goods safe, and suffers them to be spoiled.

Bradley against Benny. M. 4 Jac. B. R. Error upon a Recovery in an Assumpsit in Bristoll Court; There the Plaintiff had counted that the Defendant was a Common Carrier by Boat from Bristoll to Glocester, and that he had delivered two Butts of Muscadel to the Defendant, who assumed to transport it, pro quadam pecuniae summa; The Defendant his assumption aforesaid not carrying, &c. The aforesaid Butts so long and carelessly kept, that one of them ran out, and the Defendant pleads not guilty, and the Issue found against him; And now upon Error, by the Court, the Issue was erroneous, for it ought to have been, Non Assumpsit, for the Plaintiff replied upon that chiefly. Noy. 114.

Case 332.

Promise to an Inne-keeper to save him harmless for entertaining a prisoner.

Fletcher of Oately against Harcat. In an Action upon the Case, and counts, whereas the Defendant had arrested one Battersly by a Commission of Rebellion, flying, as he said, out of the Court of the Lord President of the North; And whereas the Plaintiff keeps, and hath kept a Common Inne in Oately, by the space of five years, and entertained men; The Defendant requested the Plaintiff to keep the said Battersly in his Inne, the space of a night, as prisoner, and he would save him harmless; And says that he had kept him that night; And Battersly afterwards brought an Action of false Imprisonment against him for it, and that in defence thereof he had expended ten pounds, and had required the Defendant to save him harmless, and he would not, whereupon non assumpsit pleaded, it was found for the Plaintiff, and Judgement was thereupon given by the Court for him. Hutton 55.

Case

Case 333, and 334.

If I have a Suit in Chancery against another, and a decree, and am suing out an Attachment for contempt, by not performing of it; and he, in consideration that I will not take forth the Attachment, and do some other things that were not valuable, doth promise to do some things to me; this is a good consideration to ground an Action upon the promise, for to stay a Suit in Chancery, may be a good consideration to make a promise obligatory. Croo. 1. last publishe. 847, 848. Coulston and Carr. M. 43. & 44 Eliz. B. R. See case 338.

To forbear a Suit, a good Consideration.

Case 335.

Custome of Grauage in London, is, That the Mayor shall have the twentieth part of the Salt brought into the Port of London by an Alien; an Alien doth bring Salt, and he for a certain summe of money agreed between the Mayor and him, assumes to satisfie him for his Grauage: And in an Action upon the Case he declares, that for so much, being the twentieth part, he did not satisfie, &c. And it was held good, as if he had said, he did not satisfie the twentieth part, &c. Dyer. 352.

Promise of Grauage to the Mayor of *London*.

Pleading.

Case 336.

Clarke against Spurden. In a Writ of Error to reverse a Judgement given in the Court of Common Pleas, the Case was briefly thus; A. Wife of I. S. Intestate, promiseth to B. to whom Administration was committed, that if he shall relinquish the Administration at the request of C. and suffer A. to administer, that A. will discharge B. of two bonds. In Assumpsit brought by B. in the Common Pleas, he alledged that he did renounce Administration, and suffered A. to administer, and that A. did not discharge him of the two bonds; and it was found for the plaintiff, and thereupon Error was brought, because B. doth not show that he did renounce the Administration at the request of C. and Rolls for the plaintiff, in the Writ of Error, (Justice Barkley (all the other Justices being absent) held, that it was Error; for consideration is a thing meritorious, and all ought to be performed, as well the request on the part of C. as the permission on the part of B. which ought to be shewed; for perhaps B. was compelled to relinquish it in the Ecclesiastical Court, as it might be; for of right the Wife ought to Administer, and therefore it ought to have been averred, that it was at the request of C. and therefore, if it had been that he should renounce at the charge of C. it ought to be averred, that it was at the charge of C. and it was adjourned. M. 13.

Consideration to relinquish Administration

Consideration not pursued.

Averment.

Case 337.

Thorp's Case. In an Action upon the Case upon Assumpsit, it was agreed by the whole Court, that where there is a mutual promise, viz. A. promiseth to B. that he will do such a thing, and B. promiseth to A. that in consideration thereof, that he will do another thing; if A. bring an Action against B. and allege a breach in non fecit, and saith, he is ready to do the thing which he promised, but that the other refused to accept of it; notwithstanding the breach is well laid, and the Action well lieth for it was needlesse, and more than the plaintiff was compelled to do.

Promise against promise.

Promise conditional.

do, to shew that paratus est to do the thing which hee promised; so that if there were a breach upon the part of the Defendant, it is sufficient; and if there was a breach on the Plaintiffs part, the Defendant ought to bring his Action for it, and the difference was taken by Bramston, where the promise is conditional, and where absolute, as in our case, and agreeing with this difference; it was said at the Bar and Bench, that it was adjudged. Hobb. 349. See cases 1. 77. 150. 82. 90. 306. 337.

Case 338.

Consideration to forbear Suit, and make a proof.

Promise to pay mony.

Tooley versus Windham. Assumpsit, for that there were controversies between him and the Defendant; for the profits of certain Lands, which the Father of the Defendant hath taken in his life time; and that hee had purchased a Writ out of Chancery against the Defendant, to the intent to exhibit a Bill against him: Upon the Return of the Writ, for the said profits; the Defendant, in consideration hee would surcease his Suit, promised to him, that if hee could prove that his Father had taken the profits, or had the possession of the said Land under the Title of the Father of the Plaintiff; that hee would pay him for the profits of the said Land, and said in facto, that hee had proved, that the Father of the Defendant had taken the profits under the Title of the Father of the Plaintiff, and upon Non Assumpsit, it was found for the Plaintiff. Cock, this is no consideration, for the Suit in Chancery was unjust, and then the staying it was no good consideration, and hee sheweth not how the Father of the Defendant did hold it, viz. by Lease, or otherwise. Curia, it is no consideration; for if the Father of the Defendant did take the profits, it is not reason his Son should answer for them; and so the Suit in Chancery unjust, and the staying of it no good consideration; but if the Suit had been for evidences, or otherwise, the staying of it had been a good consideration; but here it is for a personal Tort, for which neither the Executor nor Heir are to answer; and Trin. 33 Eliz. it being moved again, all the Court held it no good consideration, for hee did not alledge, hee was Heir, or Executor, and so had no colour to charge him; and if it had been so alledged, yet no cause to charge him for a personal Tort; and it was adjudged for the Defendant. Croo. 1. last publisht. 206, 207. See cases 39. 387. 312. 237. 280. 338.

Action personal dyeth with the person.

Case 339.

Consideration, to pay the whole debt they were joynly bound to pay.

Promise to pay him half again.

Consideration valuable.

Bagge against Slade, Pasch. 14 Jac. B. R. Action upon the Case in the Town of Yevel in Com. Summerset. The Case, two men were bound for the debt of a third man; the Obligation forfeited, and both of them liable to pay this: The Defendant said to the other, pay you all the debt, and I will pay you the mopety of this again; the Plaintiff paid it, and afterwards requested the mopety, the Defendant refused to pay it, upon a Non Assumpsit, the Plaintiff had a Verdict and Judgement, upon which they brought a Writ of Error, and assigned for Error, that the consideration was not good to raise the promise. Cook, Chief Justice, in this Case, and in the Declaration, here is a good consideration set forth; the parties own Contract here shall binde him, hee hath no remedy for the mony paid, but when this is paid, this is a good Assumpsit grounded upon a good consideration for re-payment of the mopety to the Plaintiff. Haughton, Justice, notwithstanding this, hee is still left in danger of the first bond. Cook, I have never seen it otherwise,

wise, but when one drawes money from another, that this should be a good consideration to raise a promise. Dodderidge, Justice; If the consideration puts the other to charge, though it be no waies at all profitable to him who made the promise, yet this shall be a good consideration to raise a promise. Cook agreed with him herein: Also, if a man be bound to another by a Bill in a thousand pound, and he pay him five hundred pound in discharge of this Bill, the which he accepts of accordingly, and upon this, promise to deliver up the Bill of a thousand pound; this five hundred pound is no satisfaction of the thousand pound; but yet this is good and sufficient to make a good promise, and upon a good consideration, because he hath paid money, viz. five hundred pound, and he hath no remedy for this again. They moved also, that the entry of the Judgement was not good, being thus Ideo consideratum fuit adtunc scribidem, hic ad eorund. Cur. gl. fract. cum querens recuperet. The whole Court agreed the Judgment to be well entred, and that the consideration here is good, and the Rule was quod Judicium affirmetur. See cases 4. 39. 63. 82. 84. 172. 175.

Case 340.

King and Robbinson. Mich. 29, 30 Eliz. B. R. Assumpsit. The Plaintiff declared, that he did assume to do such a thing, &c. and upon Non Assumpsit, it was found that he did assume to do that, and another thing, which he hath not performed; for where the Plaintiff declareth; that in consideration of one thing the Defendant assumed, and the Jury finde, in consideration of that, and another things he assumed, &c. he hath failed in his Assumpsit; and there this Case was cited; That a woman hath given to a man flattering words equipollentia to a promise of Marriage, and by that means he delivered to her money and other things, he retained Counsel for her, and travelled in her Suits: But after she refused to marry him, and married another in deceit and fraud of the Plaintiff, she traversed all this, and part was, and part was not found. And Catlin said, If an Assumpsit be brought upon several things, and part onely is found for him, the Plaintiff shall have no Judgement for any part. Southcote, That the Record shewed was an Action for divers receipts, which being traversed, and part found for, and part against the Plaintiff; Judgement may be given for the Plaintiff, for the part, &c. But of an entire promise it is otherwise, for there failing in part, he fails in all. Croo. 1. last publisht. 80.

Declaration naught.

Incertainty.

Deceit.

Action ill laid.

Pleading.

Case 341.

Jakers against Wright. Mich. 24 Jac. Action upon the Case declares, that the Defendant, in consideration of forty pounds to him by the Plaintiff given, did promise to take the Son of the Plaintiff for his Apprentice, for nine years, that he would teach him his Trade, and that during that time, he would find him Meat, Drink, and Apparel; That the Plaintiff had paid the forty pounds; that the Defendant had not found the Plaintiffs Son Meat, Drink, and Apparel, during the time; upon a Non Assumpsit the Plaintiff had a Verdict; In Arrest of Judgement it was moved, that the Declaration was not good, because he did not say that the Defendant hath taken the Apprentice; for if he never was his Apprentice, there could be no breach of promise; the Plaintiffs Counsel said, it must be taken by intendment, that the Defendant had taken him Apprentice, and the Action brought for not having him meat, &c. Crooke, Justice,

Promise for mony to take and keep an Apprentice.

Consideration not pursued.

Pleading.

Justice, the Verdict here doth not aid this, for if he was not his Apprentice, then there is no cause of Action. Haughton, Justice, if hee hath not taken him as his Apprentice, then the Term of finding him Meat, &c. is not begun, for when he is his Apprentice he is to finde him, not before, therefore hee ought to have made an expresse averment, that hee had taken him as his Apprentice, &c. The whole Court was clear, that the Declaration was not good: Judgement, quod quer. nil capiat per Billam. See cases 104. 106. 111. 143. 259. 336.

Case 342.

Consideration, a surrender. Promise to pay mony.

Elkin against Wastell. Mich. 14 Jac. B. R. In a Writ of Error; Action upon the Case, wherein the Plaintiff set forth, That he was seized of a House, and certain Land: and in consideration that hee should surrender the same to the use of the Defendant Elkin, and that the Defendant by promise was to give him for it five hundred sixty pound, and if hee sold the same again, the Plaintiff was to have the moyety for which he should sell the same, over and above the five hundred sixty pound, hee averres hee did surrender to Elkin (but doth not say Elkin was admitted) and that hee sold the same over to another (who was admitted) for fourscore pound more than the five hundred sixty pound; The Action brought for the whole, but for the five hundred sixty pound the Plaintiff was barred, because hee had received it, ideo in misericordia, &c. and for the residue hee recovered and had his Judgement: But they assigned for Error.

Pleading.

1. That the Plaintiff was seized in Fee according to the custome of the Manner, &c. and shews not that the same was customary Land.

2. They say that it was agreed that the Plaintiff should surrender, and do not say, hee did promise to surrender. The Court. The word agrees, implies a promise.

3. They do not shew that the Defendant was admitted. The Court over-ruled this also, because they do not say hee was to be admitted.

4. That for one part of the promise the Plaintiff was in misericordia, and for the other, that the Plaintiff shall recover, that this is but one promise, there the Plaintiff ought to have barred for the whole, or to have recovered, and not have been in misericordia for any part, Judgement affirmed by the whole Court. See cases 68. 125, 126. 242. 377.

Case 343.

By an Executor, and against an Executor.

Davenport against Davenport. Mich. 14 Jac. Action upon the Case for a promise brought by an Executor against an Executor, of an Executor upon the promise made by the Testator, for the payment of mony lent unto him. Rich. Wood borrowed the mony, and promised to pay the same; It was urged, that this is not the general Case of an Indebitatus Assumpsit, but the promise is special, and the request special, limited to the Testator, or his Executors. Croke, Justice, if no request be made, hee is not to lose his debt. The Loane here is prior ordine, but by the Law they are both of them simul tempore. The request made the mony to be paid; but if no request, the debt is not lost, for his Executor may make the request, if a man say, licet postea requisitus, without any day mentioned, it is good; they object, that here are several promises, and entire damages are given; this was held good, and affirmed to be usual in Trespasses; and they are not to sever, but where part is for the Plaintiff, and part for the Defendant: Judgement for the Plaintiff. See cases 2. 225. 10.

Request where necessary.

Case

Case 344.

Methold against Peck. Mich. 1 Car. 1. B. R. Action upon the Case; the Plaintiff declares, that whereas he, and one Marshall, &c. were bound in an Obligation unto the Defendant of a hundred pound, with condition to pay him fifty two pound ten shillings upon a certain day. That the Defendant afterwards 14 Septem. 13 Jac. in consideration that the Plaintiff would pay unto one Playford, to the use of the Defendant fifty two pound fourteen shillings upon 10 Decemb. 15 Jac. &c. The said Defendant would deliver up præjudicium scriptum obligatorium of a hundred pound unto the Plaintiff cum inde requisitus esset, to be cancelled. That he did pay the money, &c. yet the Defendant delivered not up the Bond to be cancelled, licet ad hoc sæpius postea requisitus fuisset, upon a Non Assumpsit the Plaintiff had a Verdict, and a Judgement in the Com. B. The Defendant brought his Writ of Error: The Error assisted upon was, that the Bond was to be delivered upon request, and that it doth not appear upon the whole record in C. B. that any request was made; this request is a material part of the promise, therefore to have been alledged that it was made. It was said that the Defendants plea, Non Assumpsit, is an admittance of the Request. Doddridge, it is not; for although the Defendant makes the promise, yet here, if no request be made, there can be no breach of promise, the promise being made to be performed upon request. Crew, Chief Justice, the request here is parcel of the bargain, and the Plaintiff ought to have expressed the request to have been made precisely for time and place; this being a real part of the promise, ought to be really done to make a good breach of promise: The whole Court agreed it, that it was erroneous; Judgement was reversed. Hereon page 73. Owen. Rep. 22. See for Request. Case 19.

Consideration, the obliger to pay his debt to another, by appointment of the Obligee.

The Obligee to deliver up the obligation.

Request where necessary.

Case 345.

Caple against Rogers. Mich. 1 Car. 1. B. R. Action upon the Case upon an Award. The submission was of all debts, trespasses, and actions. The Arbitrators Award twenty Marks to be paid by the Defendant to the Plaintiff, half in hand upon the Award made, the other half within six months after the date of the Award, and releases to be made by the Plaintiff; for non-payment of the money, the Plaintiff brought his Action upon a Non Assumpsit, had a Verdict for him: In Arrest of Judgement was offered two Exceptions to the Award.

Promise to abide an Award.

1. They have awarded a Release of all debts, action, trespasses, and demands; and this is more than the submission, and so a void Award.

Arbitrement.

2. They awarded the money to be paid within six months after the date of the Award, which was made long after the submission. Doddridge, Justice: The Award is void, as well upon the exceeding of the submission for the mere injury, as the submission is a large word, and general, and comprehending all manner of wrongs, all demands, for the first, the submission here doth not compel this Award to be in writing, and where it is not in writing (as it may well be intended) it shall be taken to be upon the time of the making or pronouncing of the Award; if so, it shall be taken from the time of the delivery of the same: The whole Court agreed here for the Plaintiff. Judgement for the Plaintiff. See Cases 26. 18.

Case

Case 346.

Consideration; delivery of goods. Promise to re-deliver them.

Pickas and Guile. T. 6 Jac. B. R. Assumpsit, The Plaintiff declares, that the Defendant, in consideration the Plaintiff ad tunc & ibidem, at request of the Defendant, deliberavit to the Defendant four broad Cloths, and two Packs and a half of Wool of the Plaintiffs, to the value of fifty pound, assumed the same broad Cloths, and Packs of Wool to the Plaintiff, on request to re-deliver: The Plaintiff saith in facto, that hee had delivered them to the Defendant, yet hath not the Defendant, though hee was such a day, &c. requested, re-delivered them; And upon Non Assumpsit pleaded, was found for the Plaintiff: And Yelverton stayed in Arrest of Judgement, that there is not any consideration laid in the Declaration to draw a promise from the Defendant, for the Defendant had not any benefit by the Cloths, &c. but Nudum Custodiam, which is rather a charge than benefit, for the Defendant cannot use them, and therefore ought to be resembled to the 9 Ed. 4. where delivery of Evidences to the true owner, is not any consideration, for of common right the owner ought to have them; quod fuit concessum per totam Curiam, & nil capt per Billam entred. Yelverton 128.

Consideration not valuable.

Case 347.

Against an Administrator.

Croft and Wallbanke. T. 6 Jac. B. R. Assumpsit, The Action is brought against the Defendant as Administrator of I. S. during the minority of D. and Issue joyned, and found for the Plaintiff, and alledged in Arrest of Judgement, that the Declaration is not good, quia non constat, whether D. were at the time of the Action under seventeen years, at which time the Authority is not determined; but adjudged not necessary to be shewn;

Infant.

Pleading.

1. Because the Plaintiff is a stranger to the power given to the Defendant, and cannot know of what age D. the Infant is.

2. Because the Defendant by joyning Issue, hath admitted that his power continues; for otherwise the Exception taken by the Plaintiff should be pleaded by the Defendant in discharge of himself, for it lies properly in his notice, and is for his benefit to allege it, Yelverton, 128.

Case 348.

Consideration of money. Promise to deliver Todds of Wool, at the price agreed upon.

Ragnay and Alexander. M. 3 Jac. B. R. Assumpsit, The Plaintiff declares, that whereas the Defendant was possessed of seventeen Todd of Wool, and whereas Colloquium fuit between them for sixteen Todd of the seventeen, to be chosen by the Plaintiff, the Defendant, in consideration of fly pound to be paid at such a day, &c. promised to deliver to the Plaintiff predictus sixteen Todd of Wool, and saith in facto, how he at the day was ready to pay to the Defendant fly pound, yet hath not the Defendant delivered to the Plaintiff the sixteen Todd of Wool, to his damage, &c. Nolo upon Non Assumpsit pleaded, was found for the Plaintiff: But the Judgement was, nil capiat per Billam, because the Plaintiff has not shewn, that hee had chosen sixteen Todd out of the seventeen; and thinks it is merely a precedent condition, and an Act to be performed; such by the Plaintiff, before the Defendant is obliged by his promise to do any thing, quod fuit Concessum per totam Curiam. But per Popham, Chief Justice, if the Defendant had sold one of the Todds of

Declaration.

Pleading.

Wool

Wall, before Election made by the Plaintiff, this had destroyed the Election, and been a breach of the promise: And so if the Defendant would not have suffered the Plaintiff to see the Wall, that hee might make Election, &c. Yelverton. 76.

Case 349.

Soprani, &c, Mich. 44 Eliz. B. R. Assumpsit, Soprani and Barnard brought an Assumpsit against Skurro, and declares how that it was agreed betwéen the Plaintiffs, and one Zanches, Zanches should let unto one Welsh, one Messuage in the Dukes place for the term of seven years; and that also it was agréed, that Welsh, during the said term, should repair the Tile and Glasse onely, and agréed, that those, and other Covenants, should be put in an Indenture betwéen the said Welsh, and Zanches, and that the Plaintiffs shall be obliged in a hundred pound for performance of Covenants on the part of Welsh: And further it is shewn, that the Indenture was drawn, and because there were more Covenants put in the Indenture to be performed on the part of the said Welsh, than was at first agréed, viz. that Welsh shall be obliged to all manner of reparations, Welsh refused to seal the Indenture, and the Plaintiffs refused to seal the Bond of a hundred pound for performance, &c, they shewed moreover, that in the said house was a great wall, parcel thereof, ruinous and likely to fall within the said term, and how Skurro, the Defendant, in consideration Welsh would seal the Indenture, and the Plaintiffs the Bond of a hundred pound, assumed and promised to the Plaintiffs, that hée would maintain the said wall durante prædicto termino 7 annorum; they shew, that in consideratione inde, Welsh sealed the Indenture as his Déed to Zanches, and that the Plaintiffs also sealed the Bond of a hundred pound to the said Zanches, and say in facto, that the wall of the said house fell for want of reparation within the said term, and shews in certain when, and after the sealing and delivery of the said Indenture by VVelsh, and of the said Bond by the Plaintiffs, (viz. in iis verbis, durante prædicto termino 7 annorum per Indent. præd. dimiss.) by which they have forfeited their Bond, to the damage of two hundred pound; and upon Non Assumpsit pleaded, found for the Plaintiffs: But adjudged, quod querentes nil capiant per Billam, because not expressly alledged in the Declaration, that Zanches did demise the said House, which was allowed a good Exception per totam Curiam; for, by anything that appears in the Declaration, the Indenture was sealed onely on the part of the Lessée, and not on the part of Zanches the Lessor, and if the Lessée sealed his part, and not the Lessor, nihil operat; neither in respect of Interest, nor in respect of Covenants, for the Covenants depend upon the Lease, and the Bond of the Plaintiffs upon the Covenants; and if there be no Lease, there is no Covenant, and by consequence, no breach of Covenant, by which the Plaintiffs cannot in any sort be damnified; for if the Lease had béen a Déed, and afterwards surrendred, all the Covenants and Bonds for performance of them had béen void also. Yelverton. 18.

Promise, if hee would seal an Indenture, he would repair, &c.

Case. 350.

The Hostler's Case. T. 3 Jac. B. R. In an Action upon the Case upon an Assumpsit, the Plaintiff declares, and shews himself to be an Hostler, and that the Defendant brought his Horse to him, and agréed to give

Promise of money for keeping of a Horse.

give six pence a-piece for a day and a night; and because the Horse had been there so many dates and nights, which amount to twenty pound; the Plaintiff brought his Action, and declares, licet sæpius requisitus sans, alledging a request in facto, and adjudged good; for where the ground of an Action is for a debt, in which case the Law induces a promise, there the request is not Issuable, nor parcel of the consideration; otherwise where the Action is founded upon mêer Collateral matter, and not upon a duty, for there the request is issuable, and ought to be expressly alledged; and although the Agrément was for six pence day and night, and the Plaintiff hath joyned here many dates and nights, which amount to twenty pound, and demands recompence upon the promise accordingly, yet it is good, for the Plaintiff shall not be compelled to bring his Action for every six pence, but the promise is intire in it self, viz. to pay all that the Horse takes secundum ratam six pence night and day: And is not to be compared to a single Bond, of which the Action lyes not, till all the dates are past, for the writing is simple and intire. And in this case it was said by Popham, Chief Justice, that if a man bring his Horse to an Inne, and leave him there in the Stable, without any special Agrément, but to pay, the Inne-holder is not bound to deliver the Horse till the party and owner hath defrayed his charge for the Horse, but may justifie the keeping the Horse for his food and keeping; and after the Horse hath eaten as much as hee is worth, the Inne-holder, upon reasonable praising, may sell him, and is a good sale in Law: But in the case above, though the Horse hath eat out his double value, the Inne-holder cannot sell him; for hée hath relyed upon the promise to pay six pence day and night, and upon this hée ought to rest. So if a Taylor hath any Apparel to make, and doth it accordingly, hée is not constrained to deliver them, till hée be paid for the making of them; but although in this case hee may detain them till hée be paid, yet for default of payment, hée cannot sell them, as in the other case the horse might be, the reason is, because the keeping the Horse is a charge, because hée eats, but the keeping the Apparel is not, quod tota Curia concessit. Yelverton. 66.

Inne-keeper.

Taylor.

Case 351.

Promise that *A.* shall have all the Iron made, &c. at such a rate. *A.* promises to take it at that rate.

Betisworth and Campian. T. 6 Jac. B. R. Assumpsit, The Plaintiff, as Executor of *I.* his Father, declares against the Defendant, that whereas there was communication and agrément, that the Defendant should have all the Iron made in such a Furnace, paying according to the rate of forty shillings per Tunne, and that the Testator assumpsisset to the Defendant, that hée should have all the Iron made in this Furnace, in consideratione inde, the Defendant promised to the Testator, to pay secundum ratam aforesaid; and sheweth, that the Defendant had had as many Tunnes, and as many pounds of Iron, as amounted, according to the rate aforesaid, to so much money, and confesseth satisfaction of part, and whandred and nineteen pound to be behinde unpaid to the Testator, and the Plaintiff: The Defendant pleads payment, and upon this Issue, found against the Defendant, to the damage of two hundred pound, and Judgement was given accordingly; for though the Testator promised that the Defendant should have all the Iron, so that the consideration of each part was the mutual promise of the one unto the other; although the Testator now being dead, the Defendant cannot have an Action against the Plaintiff as Executor upon breach of the Testator, yet the promise ex parte the Defendant continues. Yelverton. 133.

Reciprocal Promises.

Case

Case 352.

Tatem and Poulter against Perient. M. 8 Jac. B. R. Assumpsit, the Defendant grants to the Plaintiff a thousand Trees in such a Wood to be cut within three years after the grant, and after they were agreed, when the Plaintiffs had cut some of the Trees, that they should cut no more during the three years; and that the Defendant had licenced them after the three years, to cut as many Trees as amounts to the full number of a thousand, and for that the Defendant hindred them after the three years to cut Trees, they brought the Assumpsit, and declare, and shew forth the grant; and that in consideration the Plaintiffs would forbear to cut any more Trees, till after the three years, the Defendant promiseth to give licence to the Plaintiffs to cut as many Trees there after the three years as amounts to a thousand Trees, and alledges in facto, that at time of the promise they had cut but eight hundred, & non amplius, and that they confiding on the promise, forbore to cut any more within the three years, and how after the three years the Defendant hindred them to cut the residue, which make a thousand Trees, to the damage, &c. The Defendant pleads, that before the promise supposed to be made by the Defendant, the Plaintiffs had cut a thousand Trees absque hoc, that at time of the promise they had cut but eight hundred Trees onely, &c. And upon this the Plaintiffs demurre; and adjudged against the Plaintiffs; And the Travers adjudged good per totam Curiam, for the Plaintiffs by alledging the cutting of eight hundred Trees onely in their Declaration, which is matter issuable, hath given advantage to the Defendant to Travers in manner as hee hath done, for every matter in deed alledged by the Plaintiffs, may be traverst by the Defendant, and the Defendant, by way of Travers, may answer the matter alledged in the same words as the Plaintiffs have alledged them: and therefore the Plaintiffs by their demurrer upon the Barre have confest the cutting of a thousand Trees, which was their full bargain at first, and by consequence there is no consideration whereon to ground the promise. Yelverton. 195.

Consideration; forbearance to cut Trees, promise to licence the cutting of more.

Traverse.

Pleading.

Case 353.

Martyn and Blithman. H. 8 Jac. B. R. Assumpsit D. Holman was in execution in Plimouth, for thirty one pound at the Suit of D. which was recovered there before the Major, &c. Blithman came to the Gaoler Martin, and promised, that on consideration hee would let and suffer Holman to go at large, the thirty one pound should be brought into Court by Holman by such a day, to satisfie D. and that hee would save Martin the Gaoler harmless of this enlargement, D. recovers against Martin upon escape, and afterwards Martin brought an Assumpsit against Blithman, upon the promise, and declares ut supra, and adjudged against the Plaintiff, for the consideration is against Law, viz. to suffer one in execution to escape the same Law, per Curiam, if there had been a condition upon an Obligation, to save the Gaoler harmless of an escape, namely the Bond void, because a condition against Law, per totam Curiam. Yelverton. 197.

In consideration one in execution be delivered, that the mony shall be brought in Court.

Unlawful consideration.

Case 354.

Goodwin and Willoughby. In Action upon the Case, declares, that where the Husband of the Defendant super compotum inter eos indebitat,

Indebitatus Assumpsit.

bitat, in so much to the Plaintiff, assumed to pay him, after died, the Defendant being his Wife, and having notice of the promise, and that the Plaintiff would sue, &c. entreated the Plaintiff not to sue, till such a time, &c. and saith further, that shee is to receive so much of I. S. and promises him, if shee will forbear, as hee hath promised, till, &c. that if shee receive the same mony of I. S. that shee will pay it to him; it seems a good Assumpsit. Latch. Rep. 111. 142. and Noy. 81.

Case 355.

Assumpsit to another to my use.

Legates Case. Trin. 3 Car. 1. A Suit was between two; the Defendant doth promise to the Attorney of the Plaintiff, on the part of the Plaintiff (Anglice, on the behalf of the Plaintiff) that hee will pay, &c. in consideration, &c. And the Plaintiff brought an Action upon the Case, and declared specially as before, and not generally of a promise made to him, yet it was adjudged good, the one, or the other way. Latch. Rep. 206.

Case 356.

Consideration of a debt due, invaluable. Promise to deliver Cattle to another, to the use of Debtee.

Godwin against Batkin. Trin. 1652. Banc. Sup. A Writ of Error was brought to reverse a Judgement, given in an Action of Trespasse upon the Case in the Court of Burton upon Trent, wherein the Plaintiff declared, that the Defendant, in consideration that hee was indebted unto the Plaintiff in twenty pound, did assume and promise to deliver divers Cattle to I. S. to the use of the Plaintiff, and for non-performance of this promise, hee brought his Action, and had a Verdict and a Judgement, but the Judgement was reversed, because the Court held, that here is no consideration expressed, which can relate to the discharging of the debt of twenty pound, and so the promise is but Nudum Pactum, and the Plaintiff is, notwithstanding the promise, at liberty to bring his Action against the Defendant for the promise. Stiles Rep. 330.

Case 357.

Action for Rent on a Lease for years.

By Roll, Chief Justice. Mich. 1653. Banc. Reg. If one make a Lease for years, of Land, rendring Rent, an Action lyes upon this promise, if the promise was made at the time of the Lease made; but in this Action brought this promise must be expressly averred to be so. Stiles Rep. 400.

Case 358.

Promise of mony to marry another.

Pleading.

Greenlin and Bawdit. Hill. 1654. Upper Bench brought an Action upon the Case against Bawdit, and declared, that the Defendant, in consideration that hee will marry such a woman, did assume and promise, that upon his marriage with her, hee would pay the Plaintiff fifty pound, and would also give unto him yearly one Firkin of Egges, and a Flitch of Bacon, during the life of the Plaintiff, and upon a Nihil dicet, the Plaintiff obtains a Judgement, and upon a Writ of Enquiry of damages executed, great damages were found for the Plaintiff: It was moved in Arrest of Judgement, yet the Chief Justice over-ruled the exceptions, and to the last answered, the Record is huc usque, and so it is certain enough; therefore let the Plaintiff have his Judgement. Stiles 404.

Case

Case 359.

Hayward and Ducket. Hill. 1654. Banc. Sup. Hayward brought an Action upon the Case against Ducket, that was Executor to another, and declares, that whereas the Testator did owe unto the Plaintiff such a summe of money, which the Plaintiff intends to sue the Defendant for, the Defendant did assume and promise to the Plaintiff, that if he would forbear to sue him for the money, and would suffer him to go into the Country, he would pay the money, and for breach of this promise, he brought his Action, and obtains a Verdict: It was moved in arrest of Judgement, that there appears no consideration to ground the promise upon in the Declaration, yet Judgement was given after Objections to it for the Defendant. Nisi. Stiles. 405.

Against an Executor. Consideration of forbearance. Promise to pay.

Case 360.

Norman and Snag. Hill. 1654. Banc. Sup. An Action upon the Case was brought upon two promises, viz. to pay so much upon a certain day, and secondly, to save the Plaintiff harmlesse upon Issue joyned, and a Verdict found for the Plaintiff, it was moved in arrest of Judgement, that the Plaintiff did not shew how the Defendant had not saved the Plaintiff harmlesse, but onely said generally, that he did not save him harmlesse, and so he may bring another Action for the same thing: The Court held, that it was not good to say generally, that the Defendant did not save him harmlesse, but he ought to shew in what particular. See Cases 244. 307. 316. 332. 48. 64. 155. 182. 188. 195. 237.

Two promises to pay money, and save harmless.

Pleading.

Case 361.

Bunniworth and Gibbs. Trin. 1654. Banc. Reg. A Writ of Error was brought to reverse a Judgement given in the Court at Peterborough, in an Action upon the Case upon a promise, wherein the Plaintiff declares, that in consideration that the Defendant had received five pound which was due by the Plaintiff unto the Defendant, upon an account made up betwixt them at such a time, the Defendant did assume and promise to pay him such a summe of money, when the Defendant shall set up an Apothecaries Shop in Peterborough, if the Plaintiff be then living there: The Error assigned was, there was no consideration. Another Exception, that the Plaintiff doth not averre his Living in Peterborough, where the Defendant set up an Apothecaries Shop: This is a good Exception; Roll, Chief Justice, therefore let Judgement be reversed. Nisi. Stiles. 419.

Consideration of five pound of due debt to him. Promise to pay money, when he shall set up an Apothecaries shop in P. Consideration not valuable. Pleading.

Case 362.

Lord and Michel. Trin. 1654. Banc. Reg. A Writ of Error brought to reverse a Judgement given upon a Nihil dicit in the Common Pleas, in an Action upon the Case upon an Assumpsit, the consideration, that if the Plaintiff would forbear to sue the Defendant, that he would pay him such a summe of money: two Errors were assigned to reverse the Judgement; but after pleading, Judgement was reversed. Nisi. Stiles. 420. See Cases 26. 27. 70. 71. 318.

Promise to pay, upon forbearance to sue.

Case

Case 363.

Promise to pay such fees as shall be due to him as Solicitor.

Banks and Prat. Trin. 1654. Banc. Reg. A Writ of Error was brought to reverse a Judgement, given in the Common Pleas for an Attorney in an Action upon the Case, grounded upon a promise, that the Defendant would pay him such fees as should grow due to him by prosecuting such a Suit for him in the Common Pleas, and another in the Chancery, as his Solicitor, after Errors assigned: The Court bid shew cause why Judgement should not be affirmed. Siles. 429.

Case 364.

Promise on forbearance to sue, to pay the debt.

Boyle and Scarborough. Hill. 1655. Banc. Reg. Siles p. 440. Scarborough brought an Action upon the Case in the Common Pleas, against Boyle, upon a promise, that whereas his Son William did owe unto Scarborough five hundred pound, and Scarborough did intend to sue a ne exeat Regnum against him, till he might recover his debt, Boyle did promise, that if hee would forbear to sue out a Ne exeat Regnum against his Son William, he would pay the debt; the Plaintiff obtains a Judgement upon a Demurrer, whereupon Boyle brings a Writ of Error to reverse this Judgement; but after pleading, Roll, Chief Justice, let the Judgement be affirmed.

Case 365.

Promise on forbearance of a Suit, to pay for a wrong done.

Fowke and Prescot. Trin. 1655. Banc. Reg. Siles. 458. Fowke brought an Action upon the Case upon a promise against Prescot, Prescot a Coach-man, by careleſſe driving of his Coach, broke a pipe of Mine of Fowks, which lay in the Street, whereby much of the Mine was lost. Fowks apprehends the Coach-man, who thereupon promiseth, that if hee would forbear to sue him for it, that hee would satisfie him for it; upon breach of promise Action is brought, and obtains Verdict: At the moyen is Arrest of Judgement; but after, Glyn, Chief Justice, let the Plaintiff have his Judgement.

Case 366.

Promise to put in Bail to an Action, if hee will forbear to arrest the party.

Manell and Mackalinge. Trin. 1655. Banc. Reg. Siles. 158. Manell brought an Action upon the Case against Mackalinge, who declared, that [illegible] an intent to enter Action against the Defendant, and to arrest him at [illegible] time, the Defendant, in consideration that the Plaintiff would forbear to arrest him at that time, did promise that hee would put in Bail to him at any time, after which he shall enter his Action against him, and thereupon brings his Action for non-performance, and after a Verdict for the Plaintiff, it was moved in Arrest of Judgement; but [illegible] let the Plaintiff have Judgement.

Case 367.

Promise upon a surrender of a Coppy-hold, to give money to Daughters.

Thomas and [illegible] Mich. 1655. Banc. Reg. Siles. 461. Due promised to the Father, that in consideration hee would surrender a Coppy-hold to the Defendant, that hee would give unto his two Daughters twenty pounds a peece, and after Verdict and Action upon the Case was brought by

by one of the Daughters for breach of promise: It was moved in arrest of Judgement, but yet Judgement was for the Plaintiff. Nisi, &c.

Case 368.

Cullier and Jermin. Mich. 1655. Banc. Reg. Stiles. 463. Cullier brought an Action upon the Case upon a promise, and declared, that the Testator of the Defendant, in consideration that the Plaintiff would marry such a woman, did promise that hee would leave him half his estate at his death; upon a Verdict found for the Plaintiff, it was moved in arrest of Judgement: but Glyn, Chief Justice, disallowed the Exception, and gave Judgement for the Plaintiff.

Against an Executor.
Upon a promise of the Testator in consideration of Marriage.

Case 369.

Lance and Blackmore. Mich. 1655. Banc. Reg. Lance, Executor, brought an Action upon the Case against Blackmore, and declared, that in consideration the Testator would suffer the Defendant to enjoy such a Close of Land, the Defendant did assume and promise to pay fifty three shillings, for the Rent thereof so long time as hee should enjoy it, and for so much Rent due for it; for so long time in the Testators life time, and for so much Rent due since his death, hee brings his Action upon Non Assumpsit pleaded, a Verdict was found for the Plaintiff, and entire damages given: It was moved in arrest of Judgement, adjudged after that upon a special promise of the party to pay it, as our Case is, it will lye. Stiles. 463.

Consideration to enjoy Land.
Promise to pay mony.

Case 370.

Hardress and Proud. Mich. 1655. Banc. Reg. Hardress brought an Action of the Case against Proud, and declared, whereas hee at the request of the Defendant has taken pains to reconcile differences betwixt the Defendant and I. S. and others, the Defendant did assume and promise to the Plaintiff to pay unto him a hundred pound at a certain day, and for non-payment hee brings his Action, and upon Non Assumpsit pleaded, and a Verdict found for the Plaintiff: The Defendant moved in arrest of Judgement, no consideration to ground the promise upon; viz. that in consideration that the Plaintiff had taken pains, &c. hee did promise, &c. this is a consideration executed, and not sufficient to ground the promise upon; as in Hunt, and Diers Case, for proof. Secondly, what pains hee took is not shewen, so not to be known whether his pains were sufficient or not. Thirdly, hee took pains to reconcile, &c. and others, not shewing who they were, the two last were over-ruled, and Judgement for the Plaintiff. Nisi. Stiles. 465.

Consideration, that a man had ended differences.
Promise to pay mony.
Consideration past.

Case 371.

Laighton against Haverley. Hill. 7 Jac. B. R. Action upon the Case. Haverley promised, &c. that if hee did borrow of one Powell a hundred pound, hee would re-pay this to him upon the same day, and on the same conditions that they between them should agree upon; I. S. borrowed the money, agreed to pay it at a day certain, before which day I. S. dyed, and makes Laighton his Executor, the day passeth, the money not paid, Powell sues Laighton, and recovers. Laighton, as Executor to I. S. sues Haverley upon this promise, and had Judgement in C. B. Haverley

Consideration of loan of mony to another.
Promise to re-pay it.

Notice to bee given.

Valley brings his Writ of Error in B. R. and assigns for Error, that no notice was allebged to be given to him before the pay what agreement was made betwæn them. Fleming, Justice, this difference is to be observed, that where a penalty is to be recovered, there notice is requisite to be given, but where damages are onely to be recovered, there no notice is to be given, as in Bond, where notice is a part of the Action. In an Action of the Case upon a promise, hee is onely to recover damages, and the party hath sufficient notice given him by the Declaration against him. If notice had here been given to him, he must have paid the principal with the damages, but here there was no notice; therefore he shall pay the principal, not the damages. By Rule of Court the Judgement affirmed. See for Notice, Case 10.

Case 372.

Promise to pay for a Cure.

Infant.

Dale against Copping. Trin. 8 Jac. Action upon the Case, declares, That if the Plaintiff would cure the Defendant of the Falling-sickness, the Defendant would pay him so much: That he did cure him, and he did not pay him; the Defendant pleads Non-age, and prayed Judgement of the Court, whether the Plaintiff shall have this Action. Williams, Justice, clearly the Action will lye; for this thing is as necessary for him, as Meat, Drink, and Apparel; therefore his promise is as binding for this as the other, though under age. The whole Court was clear of opinion, that the Action was well brought, but left it to the Plaintiff to demurre to the Plea; this was agreed by the parties. Bulstr. part 39.

Case 373.

Consideration, Forbearance. Promise to pay.

Incertainty *paululum temporis.*

Baker against Jacob. Mich. 8 Jac. Action upon the Case, declares, That the Defendant, in consideration the Plaintiff would forbear him pro aliquo parvo tempore, viz. for some fortnight, or thereabouts, he the Defendant would then pay him: That the Plaintiff did forbear him two years, yet he hath not paid; upon a Non Assumpsit was a Verdict for the Plaintiff: In arrest of Judgement it was moved, that the Declaration was not good for want of good consideration to maintain the Action; it being onely to forbear him pro parvo tempore; which is altogether uncertain, & void. Yelverton, Justice, The viz. hath well explained the matter, pro aliquo parvo tempore, viz. or Anglice for some fortnight, and so forth, that he had for bore him two years, this is certain enough, and good: Another Exception was, that the Plaintiff bringing his Action against the Defendant as Executor, did not averre Assets, the whole Court disallowed of this also: So the opinion of the whole Court clearly was, that the Declaration was good; Judgement for the Plaintiff. Bulstr. part 41.

Case 374.

Promise to pay money upon his return from *London.*

Request to be made.

Notice to bee given.

Gabbe against Mosse. Mich. 8 Jac. B. R. Action upon the Case, declares, That the Defendant promised to pay the Plaintiff such a summe of money when he should return from London, that he did return from London, but did not pay the money: Upon a Non Assumpsit, the Plaintiff had a Verdict, and Judgement in C. B. upon which was brought a Writ of Error; the Error assigned was, that there was no special Request, &c. That there was no notice said to be given to the Defendant of the Plaintiffs return, that being the time of payment, which the Defendant

dant could not know without notice: The whole Court agreed, that notice ought to have been laid in the Declaration, for that it was necessary in this case, because the matter was to be done between the parties, the payment of the one upon an Act to be done by the other; otherwise where it is to be done by a stranger; that the Declaration was not good, and the Judgement for this Cause erronious: And for this the Judgement reversed. Bulstr. 1. part 44. See Cases 10. 34. 48. 52.

Case 375.

Smith against Jones. Mich. 8 Jac. Action upon the Case: Thus, a man deviseth by Will unto his Son seven pound, makes his Wife Executrix, and dyeth; afterwards shee taketh another Husband, by this account the goods comes to his hands, the Wife dyes, the Husband afterwards makes his promise, in consideration that hee had the goods, being more than would satisfie the Debts and Legacies, if the Plaintiff, being the Son and Legatee, would forbear to sue him for such a time certain, hee, the Defendant, would pay him the seven pound: That the Plaintiff did forbear him the time, that hee did not pay the mony: The Defendant pleads, his Wife was dead before hee made this promise to the Plaintiff, and therefore ought not to be charged by his promise to pay the seven pound, the Plaintiff demurres to this Plea. Fleming, Chief Justice, the next of kinne to the Wife, may have Letters of Administration, and so take the goods out of the Husbands hands; and this promise was made after the death of the Wife, therefore no good promise: If the Husband be sued for these goods in the Ecclesiastical Court, hee hath a good Plea in Barre, that hee is ready to deliver them unto the Administrator: The whole Court agreed against the Plaintiff; Judgement was given for the Defendant, quod querens nil capiat per Billam. Owen. 133. Croo. 2. 257. Bulstr. 1. part 44.

Promise to pay a Legacy upon a forbearance to sue by one that is no Executor. Consideration not valuable.

Case 376.

Brickendell, Plaintiff, against — Mich. 8 Jac. Action upon the Case. A. promised unto B. that if he would deliver unto him his two fat Oxen, intra breve tempus, that hee would then pay him a hundred pound for the Oxen, intra breve tempus: That the Plaintiff did intra breve tempus deliver the two Oxen to the Defendant, that hee had not paid the hundred pound intra breve tempus; upon a Non Assumpsit was a Verdict for the Plaintiff: In arrest of Judgement it was moved, that the Declaration was not good, for the incertainty therein, it is not known what time shall be said to be breve tempus: The whole Court agreed clearly, that the Declaration was not good; Judgement quod quer. nil capiat per Billam. See Cases 105. 368.

Consideration, and a promise incertain. *Intra breve tempus.*

Case 377.

Thorner against Field. Pasch. 9 Jac. Action upon the Case, declares, That the Plaintiff sold a Horse to another for five Marks; the Defendant being present, promised, in consideration of the sale, if the party that bought the Horse did not pay, hee, the Defendant, would see the same paid; upon a Non Assumpsit the Plaintiff had a Verdict: In arrest of Judgement it was moved, that the Declaration was not good, because it is not said, that the sale was by the Defendants request, and the

In consideration a bargain past. Promise to pay the mony, if the buyer did fail to do it.

promise is laid to be after the sale was past and perfect, so no consideration to ground the promise. If a man say, in consideration you will deliver goods to another, I will see you paid; or what you deliver to him, I will see you paid, it is good; but here, as this Case is, it is not good: So the whole Court agréed, that Judgement should be for the Defendant, quod quer. nil capiat per Billam. See Cases 259. 271. 287. 384. 397.

Case 378.

Consideration to relinquish an Executorship. Promise to pay mony.

Wemston against Webb. Pasch. 10 Jac. Action upon the Case, declares, That I. S. being possessed of goods, makes his Will, and makes the Plaintiff his Executor: The Defendant, in consideration that the Plaintiff would forbear to joyn in the probate of the Testament, & relaxaverit totalem executionem of the Will of the Testator, the Defendant would, when the Plaintiff came to such a place, pay him eleven pound: That hée did come to the place such a day, hée did forbear the probate of the Will, and had made the release; but the Defendant had not paid the eleven pound; upon a Non Assumpsit, and a Verdict for the Plaintiff: In arrest of Judgement it was moved, that the Declaration was not good, for that for one Executor to relinquish to another; this was no benefit, but a trust, and so the same is no good consideration: The Court agréed it a consideration sufficient; Judgement for the Plaintiff. See Cases 183. 336. 338.

Case 379.

Amongst Merchants.

Dockley against Bury. Pasch. 10 Jac. Action upon the Case declares, That the Plaintiff having two parts in a Ship, which was going to France for Stones, hée did grant unto the Defendant the moyety of his gain, which hee should have in this Voyage, and in consideration of this, the Defendant did assume, that hee would be at the charge of the moyety of the losses which the Plaintiff should sustain in the same Voyage, and did likewise promise to pay so much as should amount unto the moyety of the losses upon request: The Plaintiff averres his losses to be forty pound, and more, so that the Defendants part of the losses, as appears upon the Account, amounts to two and twenty pound one shilling, which hée hath requested, but the Defendant not paid; upon Non Assumpsit, the Plaintiff had a Verdict: In arrest of Judgement it was moved, that the Declaration was not good, for the incertainty of the consideration, for that which was granted, was onely a possibility, and so uncertain, Williams, Justice, if there was at the beginning a possibility, and afterwards it is reduced to a certainty; this is clearly a very good consideration: The Court agréed it; Judgement for the Plaintiff. See case 46.

Case 380.

Consideration, to take care of a sick man. Promise to pay for it.

Crips against Sir Henry Baynton. Pasch. 13 Jac. Action upon the Case. The Plaintiff set forth, that such a one being a friend of the Defendants, and coming to the House of the Plaintiff in Cirencester, it being an Inne, and there ægrotus: The Defendant came thither, and said to the Plaintiff, provide for him such necessaries as hé shall want, & pro omnibus talibus necessariis, hee did then promise the Plaintiff bene solvere: That the Plaintiff had provided for him necessaries amounted to such a summe, which hee had demanded of the Defendant, yet hée did not

not pay; upon a Non Assumpsit, the Plaintiff had a Verdict: In arrest of Judgement it was moved, that the Declaration was not good, because he had not shewed what necessaries in particular hee had provided for him. Cook, Chief Justice, hee hath shewed the matter plainly, that hee lay in his house at Cirencester two months, in which time he had provided for him such necessaries as hee needed, amounting to the summe of fifteen pounds, which upon request made, hee refused to pay; this is good, as it is here pleaded for the avoiding of such multiplicity of reckonings, without any special shewing what these necessaries were, Dodderidge, Justice, wee have here before had this Case; One said unto a Physician, that if he did cure such a one of a Fistilow, hee would give him so much for his pains; after the cure was done, hee refused to pay the mony, whereupon hee brought his Action upon his promise, and shewed in his Declaration, that hee had cured him of his Fistilow; this was held good, without shewing all the several Medicines he used about the cure; this then being moved in arrest of Judgement, as in this Case here, but the same was over-ruled by the whole Court; and so in this Case it is good, Judgement for the Plaintiff by the whole Court. See Cases 112. 382.

Pleading.

Promise to pay for a cure of a disease.

Case 381.

The Spanish Ambassador, by the name of Dondego, servient de actio against Captain Gifford. Mich. 13 Jac. An Action upon the Case; They set forth, that the King of Spain did give unto Captain Gifford, the Defendant, decem milli Ducatus Monetæ, to go for him in bello against the Barbarians before such a day: The Defendant promised, that if he did not go before the day, hee would then re-pay the mony: That he did not go, nor pay the mony: upon this the Ambassador for the King of Spain, his Master, brought this Action, and had a Verdict, upon a Non Assumpsit: In arrest of Judgement it was moved touching the consideration, being in consideration of decem mille Ducatus Monetæ, of the value of five shillings six pence every Ducket, and doth not shew when they shall be of such a value, for they may be more, or they may be lesse. Dodderidge, Justice, they are to be of this value at the time of the payment. The whole Court agreed in this, that the Jury may give more or lesse than the value, in damages, if they will. Cook, Chief Justice, if one do assume to pay another decem mille Ducatus Monetæ, and score one of them to be of the value of five shillings six pence, this ought specially to be averred: here the promise was, that if hee did not go before the last of June for the Spaniards against the Barbarians, then hee would re-pay the mony, if he goes not, this ought then to be re-payed within a convenient time after the day past: no request is to be made of this, neither ought the Plaintiff to seek him, but at his peril he ought to pay it without any request. If one do promise so much at his coming from Rome to another, he shall have convenient time to pay it after his return from Rome, and this payment is to be without any request; here the Case is upon a Non Assumpsit pleaded, and a Verdict found against him that did assume, & non fuit alegeals, & indigestis: And thereby the Court Judgement was for the plaintiff, and a Capias granted to take the Defendant. See Case 46.

Amongst Merchants.

Case 382.

Gray against Gray, Mich. 10 Jac. B. R. Action upon the Case, declares,

Consideration to pay a debt for him. Promise that his Land shall descend.

clares, That the Father, in consideration that the Plaintiff his Son would pay such a debt for him, hee did assume and promise, that hee would suffer his Land to descend upon him, that the Plaintiff satisfied and paid the Debt: That the Defendant did not suffer his Land to descend; upon this they were at Issue; a demurrer was joyned that it was no good Issue; the difference lyes in this, where the Case arising upon the Assumpsit, is in the affirmative, there it ought to be averred in facto, that the Land did descend, but when it is in the negative, it is good as in this Case to say, quod non permissit, that hee did not suffer the Land to descend: The whole Court agreed it, that the Action here was well brought, and Judgment for the Plaintiff. Bulstr. 2. part. 18.

Pleading.

Case 383.

Promise to pay the mony sued for in consideration of forbearance.

John Pooly, Knight against the Lady Gilberd. Mich. 10 Jac. Action upon the Case, declares, That the Plaintiff had preferred a Bill in Chancery against the Defendant for marriage-mony by her received: The Defendant, in consideration that the Plaintiff would stay the Suit there by him commenced, shee assumed to pay him a hundred pound, and also deliver up a Bond of forty pound which shee had; hee stayed the Suit, shee did not perform her promise; upon this was a Verdict for the Plaintiff: They move in arrest of Judgement, and alledge, that the consideration is not good, or sufficient to raise a promise, because it appears not that the Suit in Chancery was a lawful Suit to be there determined; therefore the forbearance not a good consideration. Williams, Justice, it is a good consideration, if the Plaintiff had onely a Supra out of the Chancery against the Defendant, and had not made the cause thereof known, yet if shee, in consideration that the Plaintiff would not prosecute any further against her, did assume to pay him so much, this clearly is good; by Rule of the Court; Judgement for the Plaintiff. Bulstr. 2. part 41.

Case 384.

Consideration, a Lease made, promise to pay mony.

Jones against Clark. Pasch. 11 Jac. Action upon the Case, declares, That the Plaintiff was possessed of a Shop in London, for five years and a quarter; agrees to demise this to the Defendant, he paying to him forty shillings by the year, and ten shillings the last quarter, and for the perfecting of this, each gave to other one shilling, & postea, it is set forth, that in consideratione promissor. the Defendant did promise to give unto the Plaintiff thirty pound, and did assume to pay this afterwards; in consideration of this and in performance of the Contract hee made the Lease to the Defendant accordingly, the Defendant refused to pay this thirty pound upon demand, upon a Non Assumpsit, a Verdict was for the Plaintiff: In arrest of Judgement it was moved, that the consideration was not good, because the consideration was past, perfect and executed. Dodderidge, Justice, it appears that all this was done the same day, and that the thirty pound was but for a Fine, &c. and it appearing that the Lease was made afterwards, makes it a good consideration: The payment of the Rent of forty shillings, and the same of thirty pound, all grounded upon the same consideration, being the making of the Lease by the Plaintiff; Judgement by the Court for the Plaintiff. Bulstr. 2. part 73. See case 387.

Consideration past.

Case

Case 385.

Papworth against Johnson. Trin. 11 Jac. declares, that whereas the Testator I. S. was in his life time indebted unto him in such a summe (and doth not set forth how the debt did grow due) That the Defendant (the Executor) in consideration that the Plaintiff would forbear the summe until the Will was proved, hee, the Defendant, would pay it, &c. upon a Non Assumpsit was a Verdict for the Plaintiff: It was moved in arrest of Judgement, that the Declaration was not good, because they set forth generally, that the Testator was indebted to the Plaintiff, and say not how it became due, for it might grow due for such a cause, as that the Executor might not be chargeable therewith. Haughton, where the Assumpsit is upon an Indebitatus Assumpsit by the Testator, such an Action upon the Case upon an Indebitatus Assumpsit by the Testator, lyeth not against the Executors, and of this wee are clearly agreed; but in this Case it arisethnot upon an Indebitatus Assumpsit of the Testator, but upon a Collateral promise made by the Executor. So Doddridge, Justice: Judgement by Rule of Court for the Plaintiff. Bulstr. 2. part 91.

Against an Executor. Promise to pay a debt upon forbearance to sue.

Pleading.

Case 386.

Rogers against Parry. Mich. 11 Jac. B. R. declares, that in consideration of so much paid by the Plaintiff to the Defendant, hee did promise to the Plaintiff, that hee would not exercise the Trade of a Joyner, in a Shop, parcel of a house to him demised in London, for one and twenty years, durante termino praedicto; That the Defendant did demise this to a Joyner, who did there exercise the Trade of a Joyner during the said Term, and contrary to his promise; upon a Non Assumpsit a Verdict was for the Plaintiff: In arrest of Judgement it was moved, that the Declaration was not good, because hee doth not say that he there used the Trade of a Joyner during all the said Term, but during the Term generally. Cook, Chief Justice, there is a difference when the Assumpsit is in the negative, and when in the affirmative; if a man undertake to live in a house during the Term, there it must be taken during all the Term, but where hee promiseth not to use in it during the Term, it must be taken not at any time within the Term. Cooke, Justice, doubted upon the binding of one not to use his Trade, but the Court are of that a man cannot be bounden to use his Trade in general, this is not good, but the whole Court agreed clearly, as this Case is, for a time certain, and a place certain, a man may well be bound. That the Declaration was good: Judgement for the Plaintiff. Bulstr. 2. part 136. See Case [illegible]

Consideration of mony given. Promise not to use a Trade in such a place.

How a promise shall be taken.

Promise unlawful.

Case [illegible]

Child against Horden. Mich. 11 Jac. declares, that whereas there was a difference between the Plaintiff and Defendant touching the quantity of Rent to be paid by the Defendant to the Plaintiff; The Defendant promised, that if I. S. would affirm that the Rent reserved upon the Lease was so much, hee the Defendant would double the same Rent to the Plaintiff: That I. S. did affirm it, the Plaintiff demanded double according to promise, the Defendant refused to pay it: upon a Non Assumpsit a Verdict for the Plaintiff: In arrest of Judgement it was moved, that the Declaration was not good, because they did not say that they

Promise, that if I. S. would affirm a Rent in difference to be due, hee would double it.

they had given notice of this to the Defendant, that I. S. had affirmed it, being no time certain was set down. Haughton, Justice, there will be a difference where a thing is to be done privately by the Plaintiff himself, there notice is to given, but if it be to be done by a stranger (as in this Case) there the Defendant at his peril ought to take notice of it, and no notice is necessary, because he hath undertaken to do it: So the Declaration is good, and Judgement entred for the Plaintiff. Bulstr. part 2, 143. See case 99. 2, 3.

Notice to bee given.

Case 388.

Sympson against Powell. Mich. 12 Jac. An Action of the Case, declares, that whereas a Statute was acknowledged by the Defendant to the Plaintiff, for the performance of certain Covenants contained in an Indenture of demise by the Plaintiff made unto him, amongst which Covenants, one was, that he should not assign over the Lands to any one, which Covenant hee had broken by assigning of his Lease over, and by this the Statute came to be forfeited: That the Defendant, in consideration that the Plaintiff would forbear to sue him upon the said Statute, so broken by the assignment, he, the said Defendant, would pay the Plaintiff such a summe of mony, which he hath not paid; upon a Non Assumpsit, Verdict for the Plaintiff: In arrest of Judgement it was moved, that the consideration was not good, in regard that the Statute doth not appear to be forfeit; because he doth not shew in the Declaration by what conveyance he had assigned over his estate, but layes it in general, that he had assigned it. Cook, this is clear a good consideration, for that's but an Inducement in the Declaration; the consideration is the delaying of the Suit, which is good, to which all the Court agreed. Cook further, your promise upon consideration the Plaintiff would not sue you upon the Statute, is a direct admittance by your self, that the Statute is forfeited: Judgement for the Plaintiff by agreement of the whole Court. Bulstr. 2. part 268. See cases 10. 69.

Consideration, forbearance to sue a Statute.

Promise to pay.

Consideration valuable.

Case 389.

Freeman and his Wife against Freeman. Mich. 12 Jac. An Action upon the Case, declares, that the Defendant, in consideration that the Plaintiff's Wife, while shee was sole, would take the Plaintiff to her Husband, he promised to assure unto her such an estate in Land for her life for a Joynture, that shee did take the Plaintiff to her Husband; the Defendant did not perform his promise; upon a Non Assumpsit, was a Verdict for the Plaintiff: In arrest of Judgement it was moved, that the Action would not lye, for that there was no good consideration set forth: The Court clear of opinion, it is good, Judgement for the Plaintiff. Bulstr. 2. part 269. See cases 9. 14. 17. and others.

Consideration of Marriage. Promise to make a Joynture.

Consideration valuable.

Case 390.

Chapman against Jane Barnaby, as Executrix to her Husband. Mich. 12 Jac. An Action upon the Case; The Plaintiff sets forth, that he had sold certain Wines to the Defendants Husband, and the mony not being paid, he had a purpose to sue her for it; after her Husband death, shee acknowledged the debt, and promised, in consideration that the Plaintiff would forbear her until such a time, shee would pay him; That the

Promise by the Executor, upon forbearance of a debt to pay it.

Good consideration.

the Plaintiff did forbear that time, shée did not pay; upon a Non Assumpsit a Verdict was found for the Plaintiff: In arrest of Judgement was moved, that this debt grew due upon the Contract of the Husband, and the promises upon forbearance for a time; this is not good to charge her: The whole Court clear, that it is good: Judgement for the Plaintiff. Bulstr. 2. part 278. See case 225.

Case 391.

Talbye against Cooke. Hill. 7 Jac. B. R. An Action upon the Case, declares, that the Plaintiff and Defendant accounted, and thereupon the Defendant was in arrear to the Plaintiff in six pound, which hée promised to pay at a day then past: The Defendant pleads and confesseth, that a long time before there was such an Account, and hee was in arrear then to him six pound, for the payment of which hée entred into Bond to the Plaintiff, and concludes his Plea with an absque hoc, that there was any other Account betwéen them since that time: The Plaintiff demurres in Law, and saith, the Traverse so taken is not good, for the Account is not traversable, but the Assumpsit in this Case. Yelverton, Justice, the Defendant doth not traverse the consideration, but by his Plea hee confesseth the Action with full satisfaction made of the same demanded: And afterwards to take the Traverse and say, absque hoc, that at any time after this hée did account with the Plaintiff, hée could not have taken a better Traverse: The Court all agréed in this: Judgement for the Defendant, quod querens nil capiat per breve. Bulstr. 1. part 16. See cases 142. 178. 219. 253. 287. 330.

Upon an Account.

Pleading.

Case 392.

Wolverton and his Wife against Davis. Trin. 8 Jac. B. R. Action upon the Case, declares, that the Defendant, in consideration that the Plaintiff would pay him a hundred pound, hee would enfeoffe the Plaintiff of certain Lands: Upon request; That the Plaintiff paid him the hundred pound and requested the feoffment, the Defendant refused to make it: The Defendant pleads, that before the Action brought, hée did enfeoffe the Plaintiff: That the Plaintiff had accepted thereof in satisfaction and discharge of all, and yet contrary thereto hée brought his Action; and so hée prayes the Judgement of the Court by his Council, whether this his acceptance of the feoffment did not go in discharge of all: The Court agreed it, and Judgement for the Defendant, quod querens nil capiat per billam. Bulstr. 1. part 38. See cases 134. 150. 186.

Consideration, to make a feoffment, promise to pay mony. Contract discharge by a subsequent Act.

Case 393.

Blunt and Basset. P. 2 Car. 1. In an Action upon the Case, and shews, that the Plaintiff did leave his horse with the Defendant, being an Inne-keeper, to be safely kept at such a rate, and the Defendant lent him out to hire to divers persons; whereby hée was made lame, and the Plaintiff lost his businesse, and was damnified, &c. And upon not guilty pleaded, Verdict was found for the Plaintiff, and it was moved, that since the Jury found twenty Marks damages, that the Defendant might retain the Horse. The Court, in this Case, the damages are not given for the Horse, but for the mis-use and loss of business, but in Trover it is in recompence of the Horse, and the Plaintiff had Judgement. Bendl. 171. See case 390. sect. 1. case 1.

Inne-keeper abusing of a horse.

Case 394.

Promise for Wares sold, to pay mony.

Stone and Withepole in B. R. Trin. 30 Eliz. Action upon the Case; The Plaintiff declared, that I. S. was indebted to him for Velvet, and other things, to such a value, promised to pay it such a day, and dyed, and the Defendant being threatned with a Suit, hée desires the Plaintiff to stay till such a day, and hée would pay it, or give security for it; hée stayed, &c. and set forth that the Defendant was Executor to him, &c. The Defendant pleaded, that the Testator was within age at the time of the making the promise; and hereupon the Plaintiff demurred: And Judgement was given against the Plaintiff, and that the Contract of

Infant.

the Infant was merely void; And yet there said, If an Infant commit Trespasse, and submit it to an Award, that this will binde him at his full age: Or if hee at his full age assumes to pay such a debt arising du-

Executors.

ring his minority; some say this is good; And where it is upon a promise of forbearance; there doubtlesse the promise is good. But if one promise a debt that hée doth not owe, this is void: And yet if goods be delivered to an Infant, to be re-delivered, if the Executor of the Infant, shall afterwards assume to re-deliver them; this is good: And there it is said

Infant.

to be agreed by the Court, That where an Infant is bound in an Obligation, and hee at his full age promiseth, upon forbearance to sue for payment of the debt, that an Action will lye for this. Croo. 1. last publisht. 700 and Owen. Rep. 94, 95. Where the Case is somewhat otherwise reported. And in Croo. 1. last publisht. 126. It seems to be put thus, Stone and Withepole Executor of D. Withepole. Hill. 31 Eliz. B. R. Assumpsit, where the Testator, an Infant, was indebted to him for certain péces of Velvet, and other things, and five pound in mony, and hee being within age, promised to pay it such a day, and dyed before the day, and the Plaintiff being minded to sue, the Defendant desired him to forbear his Suit till such a day, and hee would pay him, or give security, whereupon hée stayed, &c. The Defendant pleaded his Non-age, the Plaintiff demurred; and it was adjudged against the Plaintiff, See Cases 372. 128. 253. 394.

Case 395.

Traverse.

In the Case of Harris and Ewre, upon two several promises, the Defendant did traverse a consideration executed, and the Chief Justice held it not traversable: But that a consideration executory is traversable. Trin. 14 Jac. B. R. And that it was adjudged. Mich. 37, & 38 Eliz. Co. B. inter Genny & Goochman; That if one declare, that in consideration quod deliberasset & dedisset to the Defendant twenty Shéep, hée

Consideration past.

assume, &c. that this is not a good consideration, for it is past, See cases 384. 387. 317. 265.

SECT. II.

Case 396.

Sir William Wrey versus Vesper in B. R. An Action upon the Case; Whereas A. &c. being a Corporation, were seized in Fée of three

Water-

Water-Mills in L. præ dict. And that the said A. and all those, &c. in the said Mills for them their Tenants and Farmers time, whereof, &c. have had their Water-courses running from a place called H. in parochia L. prædict. usque the said Mills to serve them with water to grinde Corn: And that such a day and year they demised unto him the said Mills for one and twenty years: And that hee being so possessed, the Defendant primo Octobris, 5 Jac. apud L. prædict. between H. aforesaid, and the Mills, in a Close where the Mills are erected, and where the Water-course used to run, digged a Trench, and diverted the said Course of Water, whereby it came to passe, whereas hee was used to grinde every week thirty Quarters of Corn, hee could now grinde but ten Quarters, &c. and upon not guilty pleaded, and a Verdict for the Plaintiff, and divers Exceptions taken to the Declaration, Judgement was given for the Plaintiff. Croo. 2. 263.

For turning a water from a Mill.

Case 2.

In Batens Case. Coo. 9. 24. In a quod permittat to throw down a house raised to the Nusance of the Franklement of P. and now of the Plaintiffs, and counts that the Defendants House did hang over the House of the Plaintiffs: In this Case it was amongst other things resolved,

Nusance by over-building a house.

1. That hee need not to shew how hee had the estate of P.

2. That the Writ to the Nuance of the Franklement of P. and &c. is good, the erecting in the time of P. implieth a Nusance to him, and to say to the Nusance of the Plaintiff is necessary.

Pleading.

3. That the Nusance to the damage of the Plaintiff appears to the Court, and need not to be shewn, the hanging over is a plain proof that the light is stopped, and the Rain falls. The plaintiff may throw down the Nusance. The Statute VVestm. 2. 24. which gives a quod permittat against the Alienee of him that erects, extends not to the Alienee of the Alienee.

Case 3.

In Aldreds Case. Coo. 8. 57. It was resolved, 1. That when a man hath a lawful profit by prescription of time, other customs of the like time also cannot take the same away, for one custome is as antient as the other. As if one have a way over the Lands of B. to his Free-hold Land by prescription. B. cannot alledge a custome or prescription to stop this way, for it may be the owner of the Land, before the time of memory has granted such a way, without a stopping; and so the prescription might have a lawful beginning. 29 Eliz. B. R. 2. Thomas Brand prescribed, time out of memory, to have the light of seven Windows towards a peece of Land of Thomas Moselie in the City of York; and Moselie erected a new building upon the same peece of Land, so near, &c. as the light of the windows were stopped. Brand brought his Action of the Case, and Judgement was given for the Plaintiff; for it might be, that before the time of memory, the owner of that Land did grant license to the owner of the Messuage, to have the same seven windows, without stopping them: And so the prescription might have a lawful beginning. 3. If a man have a Water-course to his house for necessary uses, and a Glover make a Lime-pit for Calf skins so near to it, that it doth corrupt it; this Action lyeth: So for erecting of a Hogg-stye so near to my dwelling-house, that the Aire is corrupted, or a Dye-house, if the filth run into a Fish-pond, and

Prescription to a way.

To Lights.

Water-course. Lime-kill. Hogg-stye. Dye-house.

Prospect.

yet these things are profitable: So this Action will lye for stopping of my light, but not for stopping of my prospect.

Case 4.

Nusance, stopping up light.

This Action was brought against B. a Tenant, and declares thus, That the Plaintiff was seized in Fee of a Messuage and Chamber in N. and T. H. was then possessed of a little Shed adjoyning to the said house, and that at the time (said for the Seisin) and from the time whereof, &c. there was a window in the said house looking towards the Shed, by which window onely, and by no other means, the light came into the Chamber of the said house: That T.H. erected a building upon the said Shed, so neer to the said house, that it stopt all the light of the window, that he lost all his light. And that the Defendant B. being possessed of the same building newly erected, had continued and not amoved it from such a day; upon not guilty pleaded, it was found for the Plaintiff, and upon motion to arrest this Judgement, it was resolved, that this Action might have been had against him that built it, but it lyeth not against the Tenant for the continuance of it by habitation onely: But that for a new Cock, or a new Penthouse, that over-hangeth another mans Court, by the new turning of a Cock, or a new shower of Rain, is a new Nusance, and he may have Action. Croo. 2. 373.

Against whom it lyeth.

Case 5.

Stopping the light of a house.

Simonds and Seaborne, Mich. 9 Car. 1. B. R. The Plaintiff shews, that hee was possessed of a house in, &c. and the Defendant was, and yet is possessed of a house, and void peece of ground, from which ground the light came into the Plaintiffs Windows; the Defendant malitiously to keep the light away, erected a house, whereby his house is totally darkened; moved in arrest, &c. that there is Repugnancy in the Declaration; and now to say adhuc possessionat of the peece of ground, and to shew the offence in erecting, shews it no peece of void ground now, but the Judges held it not so, for it may be but part is built upon. 2. There is a prescription alledged, and not any person alledged in whom the prescription may be tried; the Plaintiff is but Lessee for years, who cannot prescribe: But to this was answered, the time whereof, &c. is tied to the house, and not to any personal prescription, and being an antient house, any windows therein time whereof, &c. there need not any prescription in any person; wherefore it was adjudged for the Plaintiff. Croo. 1. 237.

Prescription.

Case 6.

Nusance in a way.

Sackman versus West. In an Action of the Case, the Plaintiff supposeth, that such a Corporation was seized in fee of a house in S. And that he, and all they whose estate in the said house, &c. have had a foot-way from this house to the River of Thames, and let this house to the Plaintiff for years, and that the Defendant erected a Gate-house crosse the said way. In this Case it was resolved and adjudged, that the alledging of it by such a prescription, and a One Estate, was good, without shewing how by deed, because the Action was brought by a Lessee for years, who hath not the deed: But if he had claimed Rent, or Common in grosse, which cannot passe without a deed, Contra: for there the deed must be shewn. Croo. 2. 673. Adjudged for the Plaintiff.

Pleading.

Case

Case 7.

M. 9 Jac. B. R. Ward versus Cheshire. The Plaintiff counts, that he is seized in fee of a Kitchin in parochia Sancti Dunstani in London, and prescribes to have windows on the backside, &c. that the Defendant had stopped up ratione cujusdam partem, &c. upon not guilty it was found for the Plaintiff, and moved in arrest of Judgement: 1. For that he did not shew the Kitchin was antient, but resolved to be implied in the prescription. 2. For that the quantity was not shewed, sed non allocatur, but resolved that it need not be, and the Plaintiff had Judgement. Nuisance in stopping of light. Prescription.

Case 8.

Hill 9 Jac. B. R. Hughes and Keme. A. had an antient house in London, B. builds a new one, which stops the light of A. per Curiam, Resolved, 1. That a man cannot, by the Custome of London, erect a new house, where there was not one before, to stop the lights of the antient house. 2. Upon an antient foundation a man may erect a new house, and stop the antient lights of his neighbour, for by the same reason that his neighbour erected his house higher, he may erect his higher; but he cannot enlarge his in breadth or length, to stop the light of his neighbour. Lights stopped. *London's* Custome.

Case 9.

This Action upon the Case was brought against Dame Brown, for turning a part of a course of water that did run from, &c. to the house of the Plaintiff: And it appeared, that the diversion was of one main pipe, out of which the Husband of the Defendant made a Quill with a Cock, to serve his house in his life time; and because it was with a Cock, so that upon every opening of the Cock, there was a new diversion; the Action did lye against the Wife: But the Judgement was long stayed, because the Plaintiff did not set forth that he was seized of the house, to which, &c. at the time of the diversion, sed cum existat, &c. And after Error was brought, Dyer. 320. Water-course. Nuisance continued. Count.

Case 10.

In Penruddocks Case. In a quod permittat between Clark Assignee of Thomas Chickley, Plaintiff, and Edward Penruddock, and Mary his Wife, Defendants, Assignee of one John Cock, for that Cock Octobris 10. Mar. erected upon his free-hold a house in St. Johns-street, so near the Curtilage of an house of Thomas Chickley, that domus illa super pendet Anglice, doth over-hang magnam partem, videlicet tres pedes Curtilagii, the Plaintiff, sic quod aquæ pluviales de eadem domo decedentes solum ejusdem Curtilagii conterunt, & magnopere & indies magis magisque consumunt & devastant, ac ea ratione Curtilag. prædict. quotiies pluviale tempore humectat, & inundat, existit, quod prædictus Henricus Clark inhabitans in eodem Messuagio nullum proficium seu aisiamentum de eodem Curtilagio percipere possit ad nocumentum liberi tenement. prædict. &c. It was resolved, that the distilling of the waters in the time of the Fensse, or Assignee is a new wrong; and that this Writ lyeth after request of amendment, but not before: But it lyeth against him that first did the wrong without Request; and the Action good, &c. Coo. 5. 100. By over-hanging my house. Nuisance continued.

Case

Case 11.

Common Nusances. No Action for these.

In Williams. Cod. 3. 71. It was resolved, that no one man alone may have an Action of the Case for a common Nusance made in the high way, to avoid multiplicity of Actions against one man for the same thing: But if any particular man have more particular damage than another man, he may have a particular Action of the Case for his particular damage: But for common Nusances, other Remedy is to be had; and therefore a prescription to do Divine Service in a Chappel for the Lord, and his Tenants is remediable in the Spiritual Court onely: But for the Lord and his private family, an Action of the Case lyeth for the Lord onely.

Prescription for Divine Service in a Chappel.

Case 12.

Stopping of a Way.

Baker and his Wife against Bereman. Mich. 11 Car. 1. B. R. Action on the Case, shewes, that they were possessed of such a Close for years in such a Parish, and that the Defendant was possessed of another Close near joyning: And that within the said Parish there is a custome, That all occupiers of such a Close of the Plaintiffs, time out of mind, &c. had a house and fot-way, &c. And that the Defendant has built to stop the said way, &c. moves in arrest of Judgement, 1. That such a Custome in a Parish alledged for an occupier to have a way, &c. is not good; but he must prescribe in him who hath the Inheritance; and that a Custome in a Parish cannot well be applied to a Close in the Parish. Coo. 6. 59. Dyer. 363. And of that opinion was the whole Court: But Inhabitants may prescribe for a way to Church or Market, or the like, where necessity is: But not in matter of profit or charge in anothers soil. 8 Ed. 4. 5. So for Fisher-men to dry Nets, pro bono publ. 15 Ed. 4. 29. And there held, the Husband and Wife might joyn in wrong done to her, where he hath her Right. Croo. 1. 302.

Custome of a Parish.

Case 13.

Stopping of water coming to a Mill.

Richard Jackson and Mordant. Mich. 30, 31 Eliz. B. R. The Plaintiff counted, that hee had a Lease for one and twenty years, of five Acres of Meadow near to a River called Wesbury River, that the Defendant had erected a Water-Mill super & trans the said River, by reason whereof, obstupavit the Water running in the said River with his Mill, so that the Water from time to time yearly after the erecting of the said Mill, overflowes the Banks of the River in the said five Acres, and them inundavit, by which they became barren, &c. and Judgement was given for the Plaintiff. The same time another Case between Broome and Mordant. The Plaintiff did count, that he was seized of a Water-Mill called Westbury-Mill, ut de libero tenemento: And that he, and all those whose estate he had in the said Mill, have, time out of minde, had a Water-course running in the River of Westbury, to a Mill called Innesty-Mill, &c. to the said Wesbury-Mill, and from thence, &c. super & trans an Acre of Land of the Defendants to a Mill called Mixbury-Mill, &c. and this without any erecting of any Mill: And has, time out of mind, the multure of divers Inhabitants there of their Corn, &c. And that the Defendant erected a new Mill upon the said Acre of Land, per quod obstupavit aquam prædictam ita quod molendinum prædictum suffocatum fuit, so that he lost the profit, &c. Judgement was given for the Plaintiff. Croo. 1. last publishr. 112, 113.

Prescription.

Erecting of a new Mill.

Case

Case 14.

Bury and Pope. M. 30, 31 Eliz. B. R. In a Case for stopping of light; It was agreed by all the Justices, that if two men be owners of two parcels of Land adjoyning, and one of them doth build a house upon his Land, and make windows and lights looking into the others Lands, and this house and the lights have continued by the space of thirty or forty years, yet the other may upon his own Land and Soil lawfully erect a house or other thing against the said lights and windows, and the other can have no Action, for it was his folly to build his house so neer to the others Land; and it was adjudged accordingly; Cujus est solum, cujus est summitas usque ad Cœlum. Croo. 1. last publisht. 118. and Lanes Rep. 234. where it is thus reported. A. demised two houses in London to Mason for sixty years, Mason leased one of them to B. and covenanted with him, that it should be lawful for him his Executors and Assigns to make a window in the Shop of that house, so assigned, which was after done where no window was before, after B. assigned the house to the Plaintiff; And the Defendant having a house adjoyning, built a new house in his own ground over against the other, and thereby stopt the new window; It was resolved by the Court, that no Action would lye for this, because the window was made within the time of memory: But if the window had been there, time out of mind, Contra, But if the Defendant had held it under the estate of Mason, that had covenanted, it could not have been restricted.

Stopping of light.

Case 15.

Westborne and Mordan. M. 32, & 33 Eliz. B. R. Action upon the Case; where hee was possessed of a Meadow called Parsonage Meadow in W. adjoyning to a little Brook there, from the twentieth of April, 31 Eliz. & adhuc inde possessionatus, the Defendant the said twentieth of April, put in divers loads of Stone into the said Brook, and by it obstipavit aquam illam, that it from the twentieth of April, to the day of the Writ purchased, overflowed his Meadow, that hee could not have the benefit of it: Verdict for the Plaintiff, motion to arrest the Judgement, for the Nuisance is supposed to bee done before the Plaintiffs Title did begin: But Judgement was commanded to be entred for the Plaintiff. Croo. 1. last publisht. 191.

Case 16.

Sir George Fermor and Brook. M. 32, 33 Eliz. B. R. Action upon the Case, for erecting a Bakehouse in Tossiter; and declares, That where, time out of mind, &c. there had been a Manor called Tossiter in the said County, and for the same time a Town of Tossiter, and that all the Land within the same Town had been holden of the said Manor of which hee is Lord; and that hee, and all his Ancestors, and all those whose estate, &c. had used to have a Bake-house, and a Baker there to bake white bread, and brown bread, for all the Inhabitants there, and strangers, passengers, and that none by the said time, &c. had used to have a Bake-house there, but by their appointment; yet the Defendant has erected a Bake-house there, &c. Non-assumpsit found; In this Case upon a Demurrer it was adjudged for the Plaintiff. Croo. 1. last publisht. 209.

Prescription.

Erecting a new Bake-house.

Case

Case 17.

Levying of a Damme.

Beswick and Cunden. Trin. 37 Eliz. B. R. Action upon the Case; for that the Defendant levied a Damme in such a River such a day, whereby it drowned the Land of I. S. who afterwards infeoffed the Plaintiff thereof, and that the Defendant adhuc malitiose custodivit the said Damme, whereby the Plaintiffs Land is surrounded; upon this Declaration it was demurred in Law; and said, the Action is not maintainable, for the Plaintiff had not any thing in the Land at the time of the Nusance erected, and no new thing is done to his injury; And cited 4. Ass. 3. 2 H. 4. 11. 18 Ed. 2. Ass. 374. And the Lady Browns Case. Dyer. 319. Where for every turning of the new Cock shee was chargeable; admitted to be Law, And F. N. B. 11. That the Heir of the Feoffee shall have Action against the Feoffee of him that levied the Nusance: And Rolls Case. Pasch. 25 Eliz. said to be adjudged; where one erected a house so near to another house, that the Rain descended from the new house, &c. and the Heir brought an Action upon the Case for the Nusance made by building the house in his Fathers time, and recovered by Judgement. Gawdy held, the Action was well brought for the keeping it up in his time, but not for the levying of it. Popham. There is a difference, when there is not any profit remaining to him, to whom the Nusance is levied, then it is clear, that none may have the Action, but hee to whom it was done. As if I have Pot-water running from a River to my house, and I. S. stop it in his Land before it come to my Land, and hee dyes, or makes a Feoffment over, my Heir, or my Feoffee of the Land, can have no remedy for the wrong before: But where any profit remains to the Heir, or Feoffee after the Nusance done, there for so much thereof as is kept from them, they shall have remedy: And in this Case by the continuance of the Nusance, the ground surrounded is made worse and worse, and therefore it was agreed, the Action will lye here; And so in Case of a Non-Feasance, for not repairing of a Bank, where, &c. And two Judges held at first the Tort was extinquisht by the Feoffment: But after the Judges all agreed that the Action was well brought, and it was adjudged for the Plaintiff, &c. Croo. 1. part last publisht. 402. 403.

Who may charge, or be charged in this Action.

Nusance continued.

Case 18.

Stopping of a Way.

Alston and Pamphyn. P. 38 Eliz. B. R. Action upon the Case for stopping of a way to his Free-hold in Newton in Norfolk; upon not guilty pleaded, it was found for the Plaintiff, and moved in arrest of Judgement, that it being a Nusance to his Free-hold, he ought to have had an Assize, and not an Action of the Case. 2 Hl. 4. 11. 21 H. 7. 30. Dyer. 230. But all the Court held, hee might have the one, or the other at his election: And it was adjudged for the Plaintiff. Croo. 1. last publisht. 486.

Assize.

Case 19.

Not repairing a Bank, by which, &c.

Beswick and Cumden. M. 38. 39 Eliz. C. B. Action upon the Case, and Counts, that hee was seized in Fee of Lands adjoyning to a Bank, whereof the Defendant was seized, and that the Defendant, custodivit & manutenuit quandam molem in the Bank, by reason whereof the Bank surrounded his Land, &c. whereupon the Defendant demurred; And it was resolved in this Case by the Judges, that this Action of the Case lyeth

lyeth not: For if it were a Nusance, the Plaintiff might have his Remedy by an Assize, or quod permittat: And a man shall never have an Action of the Case, where hée may have another Remedy by a Writ founded in the Register; and this is given, where there wants such a Remedy. 2. That there is no offence done by the Defendant, for it is said hée kept and maintained a Bank, which is, that hée kept it as hée found it: And if it were a Nusance before his time, it is not any offence in him to keep it; but the Plaintiff is to have his remedy, to abate it by a quod permittat; and therefore the Case here differs from the 4. Ass. pl. 3. For there the using was a new Nusance, but it is not so here; wherefore it was adjudged for the Defendant. Croo. 1. last publisht. 520.

Assize.

Against whom it lyeth.

Case 20.

Fineux and Hovenden. Action upon the Case. Pasch. 41 Eliz. Co. B. Whereas there had been a way within the City of Canterbury, leading from St. Peters-street, to a street called Rushmarket-street; and that all the Inhabitants of the City had used time whereof, &c. to passe that way; and that the Plaintiff was an Inhabitant there, that the Defendant had made a ditch, and erected a pale crosse that way, whereby hée had lost his passage, &c. In this Action it was agreed, that this Action lyes not for a private person, unlesse hée have some prejudice above other men. 27 H. 8. 27. As where the Parson of an adjoyning Church is, time out of minde, to read Prayer every Sunday for the Lord and his Tenants, in the Chappel of the Manor, and hee do it not, here the Lord may not have this Action: But they must have remedy by the Ordinary. And yet in Case where no other Remedy is to be had, there perhaps every one may have an Action; as hath been adjudged between Westbury and Powell; where the Inhabitants of Southwark had a common watering-place, and the Defendant had stopt it, and the Plaintiff being an Inhabitant there, brought this Action, and it was adjudged maintainable. But that in this Case it is punishable in the Léte. Croo. 1. last publisht. 664.

Stopping of a way.

Publick Nusance.

Spiritual Court.

Private Nusance.

Case 21.

In Bulsters Case. Coo. 5. 104. It was adjudged, That if a man make Cony-burrows in his own Land, and the Conyes increase to so great a number, that they destroy the neighbours ground adjoyning; the neighbours may not have an Action upon the Case for this, for presently when they come into their grounds they may kill them, because they are feræ naturæ: And there it was resolved, that none may newly erect a Dove-house, but the Lord of a Manor; and if another do it, hee may be punished in a Léte; but no Action may be brought against him by any particular man: And of this opinion touching a Dove-coat, was Sir Roger Manwood, and the Barons of the Exchequer in the Exchequer Chamber. Sée it again, Croo. 1. last publisht. 547.

Conyes.

Mis-feasance.

Nusance.

Dove-house.

Case 22.

Leeds and Shakerlay. Action upon the Case, supposing hee was seized in Fée of a Mill in Snodeland; and that hee, and all those whose estate, &c. from time whereof, &c. had a water-course running by thée Villages, viz. A. B. and C. to the said Mill, that the Defendant cut the Banks of the Water-course in A. whereby hee lost the profits of

Diverting a water-course.

his Will; after Verdict for the Plaintiff; moved to arrest Judgement, because it was not shewed in the Count, that hee was seized of the Will at the time of the cutting: And for this it was held to be insufficient; and adjudged for the Defendant. Croo. 1. last publisht. 751.

Pleading.

Case 23.

Laying filth in a ditch adjoyning to my Garden.

Norton and Palmer. 43 Eliz. Co. B. Action upon the Case, for that hee was possessed of a House and Garden for twenty years, and the Defendant being a Butcher; had a Slaughter-house and Yard next adjoyning to the Plaintiffs Garden: That the Defendant had exalted his Yard, and made a ditch, whereby hee conveyed the filth, and offal of his Beasts which hee slaughtered, into the Plaintiffs Garden, wherefore, &c. And it was arrested, after Verdict for the Plaintiff, because the Writ and Count did not agree. Croo. 1. last publisht. 829.

Pleading.

Case 24, & 25.

Commoner *ne poit* kill Conyes.

Hoddeson Knight and Greesil. M. 5 Jac. B. R. It was resolved, That a Commoner may not enter into the Common, where the owner of the soil hath Conies upon the ground, albeit hee have so many as eat up his Common, and leave him not enough for his Beasts, to chase and kill the Conies: But the Beasts of a stranger hee may distrain damage feasant, or drive them out of the Common: And if the Lord surcharge the Sale with Conies, the Commoner, upon this particular losse, may have an Action upon the Case against him, by all the Judges upon mature deliberation, they being before of another opinion. Accord. P. 43 Eliz. Rot. 134. Bellew and Langden. 28 Eliz. Cony and others.

Action upon the Case by a Commoner against the Lord

Case 26.

Stopping of a water-course.

Surrey and Piggot. H. 1 Car. 1. B. R. The Case was in effect thus: A. seized of White-Acre, and also of a house, with the Curtilage and Hop-yard: And in the Curtilage there was a Water-pond for the Cattle, and the Water-pond came and gourded thorow the Hop-yard into the Pond. A. enfeoffs P. of the Hop-yard, and afterwards leases the House and Curtilage to S. P. stops the stream, and S. brought an Action of the Case: And the question was, if by the unity of possession the water-course be gone, so that the feoffee of the Land, by which hee gourded might stop it: And adjudged, that it is not extinct: For it is a thing of necessity by the continual flowing of the stream. 12 *H.* 7. 4. of a Gutter. So it is also of a thing that hath an existence during the time of the unity. As a Warren. 35 H. 5. 5. Warren. 16. Otherwise of a Rent or Way which a man cannot have in his own Land. 14 H. 7. 7. And the Case. M. 6 Jac. between Challoner and Moore was cited, that an Ejectione firmæ doth not lye of a Water-course, because it is a thing fluent and incertain. See 11 *H.* 7. 25. Of a Gutter; and there agreed notwithstanding. 21 Ed. 3. 2. 31 *H.* 6. 3. That a crosse way of necessity, is not extinct by unity of possession: But otherwise it is of a crosse way of ease. The Case of the Lady Brown was cited, who had a Water-course through White-Acre running to her house, and doth purchase White-Acre, and then cuts and stops the pipes; there such a Water-course is good, because of the intent of the owner declared; and the thing hath not now a continuance in the possession of the party himself. And Dodridge agreed, that the fence

Where extinct by unity of possession.

is

is extinguished by unity, because it is not a thing of necessity; and so the other Justices. And there this Case was agreed. A. had a Water-Mill, and a Water-course to it over his own Land, and enfeoffs another of that Land, yet the Water-course shall remain, and the Feoffee cannot stop it. Noy. Rep. 84.

Case 27.

Cantwell and Church. A Commoner brought an Action of the Case for the stopping of his way to the Common, and upon a Writ of Error affirmed to be well brought, although hee might have had an Assize. As if it be done by a stranger, and not the Terre-tenant, or by one that is dead, in which Case no Assize lyeth. In Mich. Term following; Judgment was affirmed for the Plaintiff in the first Action. Dyer. 250. 22 H. 6. 15. 21 H. 7. 30. 33 H. 6. 26. Noys Rep. 37. Stopping of a way.

Case 28.

Paul Banings Case. P. 37 Eliz. In an Action upon the Case, and declares, That where the Plaintiff was seized of a house in D. in the County of L. and shews the estate, &c. and prescribes to have a crosse way, in, by, and thorow a certain way in sale, in the County aforesaid, unto such a Close in D. in the said County, and that the Defendant made a hedge in the Close of D. in the said County, and did stop up his crosse way, &c. And upon a Verdict for the Plaintiff, exceptions were taken to the Declaration. Noys Rep. 9. Stopping of a crosse way.

Case 29.

Park and Stewsam. An Action was brought for stopping a way which the Plaintiff had from such a place over Black-Acre, where the Nusance is, unto such a Field (by name) And it was ruled to be good, without shewing what interest hee had in that Field; for it shall be intended to be a Common Field: But otherwise it had been ad talem clausum. There hee must shew what interest hee hath in the Close. 8 H. 5. 4. 6. Noys Rep. 86. Stopping of a way.

Case 30.

Gamford and Nightingale. Trin. 2 Jac. Co. B. Action upon the Case, declares, that hee was seized in Fee of Black-Acre, and that hee had a way to it by such a gate, &c. and that the Defendant had fastened the gate with a lock; and it was adjudged, that this Action will lye, and hee shall not be put to an Assize: For it doth not appear hee doth claim a Franklement in the Land by which, &c. for it may be the Land of a stranger, and then an Assize doth not lye against him: And then the disturbance is pro tempore onely, of which a man cannot have an Assize; as where a man meddles with the Franklement; as in digging, or making of a ditch. See 2 H. 4. 11. 14 H. 8. 31. Dyer. 319. 6. Noys. Rep. 112. Stopping of a way. Assize.

Case 31.

Reyner and Waterhouse. An Action upon the Case; The Declaration was, That whereas hee is, and by the space of twenty years past, hath been an Inhabitant within the Town of L. in the Parish of B. And whereas the Inhabitants of L. de tempore, &c. used to have a common Stopping of a Church-way.

was as well for foot-men, as for horse-men, to go and ride from the said Town of L. to the said Parish Church of B. on Lords dates, Festival dates, and other convenient times to hear Divine Service within the said Church, and to carry bodies, &c. dying in the said Town, to the said Church to be interred, modo & forma sequen. viz. &c. and shews the way thorow divers Closes in L. and G. and over the Church-yard of the Church of B. and from thence unto the Church aforesaid, and backward, &c. and shews one disturbance made by the Defendant, by making of a ditch in one of the Closes in G. To this Declaration the Defendant did plead not guilty, and there was a Trial, but by mistake of the venire, it was quashed, and a new ven. facias. Hutton. Rep. 27.

Case 32.

Diverting a water-stream.

Pasch. 14 Car. 1. B. R. Anonimus. An Action of the Case was brought for diverting an antient water-course, qui currere consuevisset & debuisset. to his Mill; moved in arrest, &c. because hee shewed no Title to it by prescription, &c. But it being alledged Antiquus aquæduct. And that by it the water currere consuevisset. &c. the Court held it good, and adjudged for the Plaintiff; and gave the same Rule in another Case of the like nature, and the same day. Croo. 1. 359.

Case 33.

Erecting a Tallow-furnace neer to an Inne

Morley and Pragnel. M. 14 Car. 1. B. R. Action upon the Case by an Inne-keeper against one, for a malitious erecting of a Tallow-furnace, and boiling therein stinking-Tallow, to the annoyance of him and his Guests, &c. and it was moved in arrest, &c. for that it was but his Trade; but it was adjudged for the Plaintiff, and said, that every one ought sic uti suo quod alienum non lædet; Judgement for the Plaintiff. Croo. 1. 367.

Case 34.

Stopping of a water course.

Pleading.

Sands and Tresusus. Croo. 1. 415. Hill. 15 Car. 1. B. R. Upon the Case for stopping of a Water-course, declares, hee was seized in fee of a Mill, and had a water-course running in the Defendants Land to a water-course, which run to his Mill, and the Defendant had stopped this, &c. Moved in arrest, because hee shews not that his Mill and water-course was an antient, &c. and does not prescribe to have a water-course in the Defendants Land; but held to be good enough, for hee was lawfully in possession, and the stopping was tortious; and it is not material to shew que estate.

Case. 35.

Cutting of the Bank of a River, whereby, &c.

Winchcombe and Shepheard. Hill. 42 Eliz. Camera Scaccaria. Error of a Judgement in the Queens Bench in an Action of the Case for the cutting down of the Bank of the River, whereby his Meadow adjoyning was surrounded. The Defendant justifies by prescription for the reparation of his (the Defendants) Mill; and thereupon the Plaintiff demurred, and adjudged against him. That the prescription was good, and the manner of pleading. Error was brought thereof, and Error assigned for the Mannor, viz. because hee prescribes to cut down the Banks between the River, which runs to the Defendants Mill, and the River called Old Charwell, and saith, that hee cut down the Banks of the said River,

River, and saith not between the Old Charwell, and so not pursuant of the prescription; and it was holden to be an incurable fault: And it was objected also, that hee declares that hee is Lessee at Will of Lands, and averreth not the life of the Lessor, sed non allocatur: But for the first fault, the Judgement was reversed, and the Record remanded: And the Court of Queens Bench against their former Judgement, awarded a Writ of Enquiry of Damages. Croo. 1. last publisht. 747. and in Hetley. Rep. 118.

Case 36.

Newall and Barnard. Pasch. 9 Jac. B. R. The Action was brought against the Defendant for stopping of three antient lights, which had been there time out of mind, and that the Defendant had stopped them up totaliter ad damnum, &c. The Defendant confessed the stopping of two of them, and part of the third; and Justifies by the Custome of London, that one may build upon an old foundation, and upon his own Land, &c. It was adjudged for the Plaintiff. Bulstr. 1. part 116.

For stopping up of three lights *totaliter*. Justifies by the Custome of *London*.

Case 37.

Shery and Piggot. Pasch. 2 Car. 1. B. R. In an Action upon the Case for the stopping of a water-course, which had used to have its Current from such a place thorow such a place, and so to come into the Plaintiffs pure, and there to fill and supply a Pond with water for the necessary watering of his Cattle, the Defendant hath erected a stone wall, and so hath stopped this, that the Plaintiff wanted his water, and was thereby damnified: The Defendant pleaded in Barre an unity of possession in the Land, of the house and place to which, and of the Land through which, and of other Land of which, &c. and the question was, whether this unity of possession will extinguish this water-course: And the whole Court agreed, that the water-course was not extinct by the unity of possession, and the Defendants Plea was not allowed good; but the Judgement was given for the Plaintiff, and agreed, that for Commons, and private waies, and common appendant, and such like profit out of Land, these things will be extinct by unity of possession; but not so of publick waies, and water-courses, Bulstr. 3. part 34.

Stopping of a Water-course.

Unity of possession, extinguishment of a way.

Case 38.

Ayre and Pincome. B. R. An Action upon the Case was brought against B. a Free-holder for surcharging of the Common, and treading of the Grasse; and the Plaintiff had Judgement: It was held by Rolls, he might have this Action, or an Assize at his election. Sciles. 164.

Surcharging of Common.

Case 39.

Cantrell and Church. Trin. 43 Eliz. In Camera Scaccarii; for that in an Action upon the Case, The Plaintiff declares, that hee was seized in Fee of a house and Land in D. whereto hee had Common appurtenant in such a place; and that hee, and all those whose, &c. has had a way from the said place, wherein, &c. And that the Defendant totaliter has stopped up his way whereby hee could not come to his Common, but has altogether lost the use thereof, &c. Not guilty, Verdict and Judgement for the Plaintiff; Error assigned, that hee ought to have had an Assize of

Stopping a way to Common.

of Nuisance, not this Action, because the Inheritance is in question: And so at the first, divers of the Justices and Barons held: But after divers Motions and Considerations of the Books of 5 Eliz. Dyer. 11 H. 4. 2 H. 4. And others, they resolved, that the Action was well brought, for he hath election to bring either the one or the other: For although there hath been a difference taken, where the way is so stopt up, that he loseth the use thereof altogether, and thereby his Common, there an Assize should lye; but where he is stopped but in part, and not totally, that there an Action of the Case lyes, and not an Assize: They did now conceive it not to be any difference at all, for he hath election to have either the one or the other Action, especially as this Case is, where it appears not that the stopping was made by him who is the Tenant of the Free-hold; but it might be done by a stranger, who hath nothing to do with the Land, or by one who hath but a Term therein; wherefore they all resolved that the Action was well brought: And thereupon the Judgement was affirmed. Croo. 1. last publish. 845.

Assize.

Election of Action.

SECT. III.

Case 1.

Deceit.

BAyly and Merrill. Trin. 13 Jac. B.R. The Case was, A man hired another to carry for him a load of Waddir from A. to B. and tells him it was but eight hundred weight, and promised to pay him for every hundred weight, two shillings eight pence, and it was two thousand two hundred weight, and he believing the man never weighed it, and killed some of his horses by over-draught of them: In this Case it was resolved by the Court, that no Action will lye for this Deceit, because it was by his own folly and neglect, and he might have discovered it: As when one buyes a horse upon a warranty that he hath both his eyes, and it is apparent he hath but one of them: But otherwise it is where the thing is secret, and lyes onely in the Conusance of him that doth warrant, and cannot be known by him that buyes or makes the Contract, for the Law gives no remedy for voluntary negligence. Croo. 2. 386. And again, Bulstr. 3. part 94, 95.

By mis-information.

Warranty of a Horse.

Case 2.

Tracyes Case. 7 Jac. Trin. B.R. A. doth forge a Letter in the name of B. Master of C. falsly, for a hundred pound to be delivered by C. to him, as a summe that he hath in his keeping for his Master, and A. seals this as with the seal of his Master, and C. having received this Letter by A. caused it to be read, whereby he understood that B. had directed this Letter to him, and hereupon delivered the hundred pound to A. whereas in truth B. never wrote the Letter, but A. forged it, and upon this C. the Servant brings Action upon the Case against A. It was adjudged for him, and affirmed in Error, albeit it were brought in the name of the Servant; and albeit the word intelligebat were not well averred and expressed. Croo. 2. 223. Jenkins Century. 8. Case. 1.

Forgery of a Letter to get mony.

Action brought in the name of a Servant.

Case

Case 3.

Harvey and Young. 44. Case, and 45 Eliz. B. R. I am selling a Term of years I have, and whiles I am about it, I. S. saith, and affirmeth to one that is treating with mee for the Term, that it is worth a hundred and fifty pounds to be sold, and thereupon hee gives mee so much for it, and it is too much; yet no Action will lye for the Buyer in this Case: But if hee that sells such a Term, shall warrant it to be of such a value to be sold; this may bear Action. Harvey and Young. 39 Eliz. Yelverton. 20.

My mis-information.

What shall be said to be fraud.

Warranty.

Case 4.

Redhead and Harper. An Action was brought in nature of a Deceit, That the Defendant had sold to the Plaintiff certain Sheep, and had warranted them to be sound, when indeed they were rotten: The Defendant pleads, they were sound at the time of the sale; & de hoc ponit se super patriam: The Plaintiff demurres; and it was adjudged for him, because the Defendant had taken Traverse to the cause of Action, viz. absque hoc, that they were rotten: An Issue may not be taken upon two Affirmatives. 4 H. 7. 13. 1 H. 7. 9. Noys Rep. 124. and Yelverton. 124.

Sale, and warranty of sheep.

Pleading.

Case 5.

Southerne and How. H. 15 Jac. B. R. Action upon the Case; The Case in effect was this, The Defendant was possessed of true counterfeit Jewels; and having Factors in Barbary, and knowing the Plaintiff to be there, hee acquainted his Factor therewith, and the Factor came to the Plaintiff, and intreated him to sell those Jewels for him, telling him they were good Jewels; whereupon the Plaintiff not knowing they were counterfeit, sold the Jewels (being worth a hundred pound) to the King of Barbary, for eight hundred pound, and delivered the money to the Factor, who delivered it over to his Master; and the King of Barbary finding afterwards hee was cozened, committed the Plaintiff to prison, till hee had paid him his eight hundred pound back again: This the Plaintiff required of the Defendant, and for this the Action was brought; and the Court inclined in their opinions against the Plaintiff. For, first, they were not counterfeit, being worth a hundred pound. Secondly, there is no warranty in the Case. Thirdly, it is done by the Servant, and the Master shall not answer for it. If a Servant have a general power, and exceed it, as make a warranty, or the like; this shall not binde the Master. 9 H. 6. 33. Doct. and Stud. 137. 3. The Servant had but a power, and hee could not assign over that to another.

Sale of counterfeit Jewels knowingly.

Master and Servant.

And by Dodridge, Justice; If a Gold-smith make Plate, wherein hee mingles drosse, so as it is not according to the Standard, and sends his Servant to a Fair to sell it, who sells it for good Plate, according to the Standard; for this an Action will lye against the Master, Ad quod. Mountague assented, because it fails in the price of the Silver. But here it fails but in the value; for Jewels are sold by their valuation. (Note this diversity, pretii & valoris.) Haughton, Justice; If one command his Servant to sell an ill Horse, and the Servant sells him for a good one, whereby the Servant is arrested, and endamaged, yet the Servant shall not have his remedy against the Master. And Dodridge cited this Case to be adjudged. 33 Eliz. Co. B. A Clothier of Gloucester-

shire

Counterfeiting a Clothiers mark.

shire, sold very good Cloth, so that in London, if they saw any Cloth of his Mark, they would buy it, without searching thereof. And another that made ill Cloth put his mark upon it, without his privity: And an Action of the Case was brought by him that bought the Cloth for this, and adjudged actionable. Croo. 2. 470. Yet see this Case somewhat otherwise reported in Bridgmans Rep. 126, 127. and Popham. 143.

Case 6.

Servant not paying custome for his Master, whereby, &c.

Levison and Kirk. Trin. 7 Jac. in the Exchequer. Action upon the Cases That whereas the Plaintiff was a Merchant, and 13. Martii, 40 Eliz. intended to go beyond Seas to M. to Merchandize, the same day and year at D. hee acquainted the Defendant with his determination, and then in the same place appointed and trusted the Defendant, being his Servant, to receive for him all such merchandize and goods, which should be sent over, or carried or conveyed by the Plaintiff in the same Voyage, and to pay for the custome of them, and to dispose of them, and convert them for the profit and commodity of the Plaintiff, and thereupon conveyed divers goods to the Defendant, and that the same day and year the Plaintiff took shipping, and sailed to M. and that within five daies following, twenty peeces of Velvet were brought into the Port of S. consigned by the Plaintiff to the Defendant in the absence of the Plaintiff, and that the Defendant, on purpose to deceive the Quéen of her Custome, and to make the Plaintiff to allow Custome unto him, hée did take the said goods so consigned, and land them on the Land at S. aforesaid, the Custome not paid; whereby the Plaintiff lost his goods as forfeited for default of payment of Custome, &c. Upon not guilty, and Judgement for the Plaintiff. Lanes Rep. 68. and Croo. 2. 265.

Case 7.

Sale, and warranty of Oxen.

Verdict.

Gravenor and Mere. Pasch. 44 Eliz. Co. B. Action upon the Case for Deceit; for that hee sold unto him two Oxen, and warranted them sound, absque infirmitate ubi revera non fuerunt, &c. Not guilty; found guilty for the one, and not guilty for the other: Motion in arrest of the Judgement, because hee was found guilty but of one, and the warranty alledged was joynt; ergo not the same warranty: Court held it good, for the Action is founded upon the Deceit, not upon the Contract; Judgement for the Plaintiff. Croo. 1. last publisht. 884.

Case 8.

In a Suit in Law, by an undue prosecution

Perren and Bud. M. 42 Eliz. Co. B. Action upon the Case; where Bud had brought Debt in Co. B. upon a Bill of forty pound against the Plaintiff; it appeared to the Court all but eight and twenty shillings was paid. In Trin. Term, the Court ordered, that if the Plaintiff would not accept of the eight and twenty shillings with such damages as the Court should assesse, then the now Plaintiff should imparl till Octob. Mich. That the Defendant knowing of this Order, had procured a nihil dicit to be entred. Demurrer; for that it was not averred that hée tendred the eight and twenty shillings. 2. Nihil dicit is the Act of the Court: But the Court agréed, that the Action would lye for this falsity. As where one casts a protection in delay of my Action. Croo. 1. last publisht. 795.

Case

Case 9.

Sir William Pope and Lewis. H. 19 Jac. B. R. Action upon the Case; for that the Defendant 31. Maii, 19 Jac. had bargained with the Plaintiff to sell him a Mare, the Defendant ad tunc & ibidem sciens the said Mare to be lame, & variis infirmitatibus deficere, viz. with Spavins, Splints, & ad laborandum impotentem, equam prædictam sanans, & absque aliqua infirmitate warrantizavit, & eandem equam prædictam 31 Maii, 19 Jac. pro twenty pound apud London, &c. eidem Willo. falso & fraudulenter ad tunc & ibidem vendidit, & sic dictus defendens fallaciter decepit, the Plaintiff of the said Mare, to his damage, &c. The Defendant pleaded not guilty, and found against him and it was moved in arrest of Judgement, that the Declaration was not good. First, because hee doth not say, warrantizando vendidit, for otherwise it may be, that the warranty was at one time, and the sale at another time, although they both were in one day, and then the Action is not maintainable; and although the Precedents in the Book of Entries be in this manner, it was answered, that there it is warran. vendidit, which being shortly writ, may be expounded warrantizando, which conjoyns it to the sale; but as it is, it may be otherwise intended, and then the Declaration is not good. Secondly, this Declaration is uncertain for want of the word (&) after the warrantizavit, for as it is, it is insensible. And of that opinion were Dodoridge and Chamberlain, but Lea, Chief Justice, did not deliver any opinion, wherefore the Defendant appearing, the Plaintiff declared de novo. Croo. 2. part 630.

The sale and warranty of a Mare.

Pleading.

Case 10.

Harding and Freeman. Mich. 1651. B. R. The Plaintiff (in an Action upon the Case) declared, that the Defendant did sell to him a Gelding, and upon sale thereof did falsly affirm to him, that the Gelding was his own Gelding, and that hee hired him of a Colt, which was not true, but it was another mans Gelding; upon not guilty, Verdict for the Plaintiff, and motion to arrest Judgement. 1. For that there was no warranty with the Sale: But it was adjudged for the Plaintiff. Siles Rep. 310.

Selling of anothers horse for his own, that were another mans.

Case 11.

Francis against Leicester. Pasch. 16 Jac. B. R. A. brought an Action against B. for that hee falso & deceptive sold to him two hundred and twenty Sheep, affirming them to be his own, ubi revera they were the Sheep of I. S. In this Case it was adjudged, That albeit he did not shew that I. S. did re-take his goods, or sued him for them, yet the Action did lye: For the sale of goods by a man affirming them to be his own, when hee knoweth them to be a strangers, is an offence and cause of Action 42. Ass. pl. 8. Croo. 2. 474.

Selling sheep for his own, that were another mans.

Case 12.

Fowk and Boyle. Mich. 1652. B. R. The Plaintiff brought an Action upon the Case, for selling to him false Bills of Publick Faith, to the value of eight hundred pound, knowing them to be false, with intent to deceive him. the Defendant demurres to the Declaration; But after the Exceptions taken, rule given to enter Judgement for the Plaintiff. Siles Rep. 343.

Selling false Bills of publick Faith.

Case 13.

Delivering in a false note of goods for Excise.

Brightwell and Robinson, Pasch. 1653. B.R. An Action upon the Case was brought for delivering in a false note of goods, for which Excize was to be paid in the Office of Excize, whereby he was compelled to pay fifty pound, to his damage, &c. upon not guilty, verdict, motion to arrest Judgement; and it was adjudged for the Plaintiff. Siles Rep. 368, 369.

Case 14.

Selling the goods of another for his own

Dales Case. Deceit; For that the Defendant sold to the Plaintiff divers Goods; as his own Goods, ubi re vera they were the Goods of a stranger; and it were not said, the Defendant sciens they were the Goods of a stranger; and it was adjudged against the Plaintiff. Croo. 1. last publisht. M. 27, 28 Eliz. Co. B.

Case 15.

Selling Land whereto he had no title.

Russell brought Deceit against Vaughan, and declared, That the Defendant sciens that hee had no Title to the Advowson of D. took upon him to be owner of it, and sold the profits of the said Advowson to the Plaintiff pro quadam pecuniæ summa; And in arrest of Judgement it was urged, that the Plaintiff did not averre ubi re vera, the Defendant had no Title; Et non allocatur.

Case 16.

In the sale of anothers goods.

Furnice and Leicester. P. 16 Jac. Action upon the Case; for that the Defendant falso & deceptive sold unto him such a day two hundred and twenty Sheep, affirming that they were his own Sheep, ubi re vera they were the Sheep of I. S. The Defendant pleaded not guilty, and found against him: And it was moved in arrest of Judgement, that the Action lay not, because he doth not shew that hee had any damage, or that I. S. had re-taken them, or sued him for them, as 42. Ass. 8. sed non allocatur; for the sale of goods which were not his own, but affirming them to be his goods, knowing them to be a strangers, is an offence and cause of the Action; and if he should tarry until the goods were taken from him again, it might peradventure be mischievous unto him, and he should be without remedy; wherefore absente Montague, it was adjudged for the Plaintiff. Croo. 2. part 474.

Case 17.

Deceit in an Officer in the doing of the work of it.

Sir William Clarks Case. Croo. 1. last publisht. p. 873. For that one I. S. being out-lawed at the Plaintiffs Suit, and a Capias utlagatum, awarded against him, directed to the Defendant, Sheriff of the County of Bucks, returnable at such a day, &c. and because he did not return the Writ, the Action was brought, and Judgement against the Defendant, by non fum informatus, and upon a Writ of Inquiry of damages found to forty pound, and now William moved in arrest of Judgement, that an Action lyes not for not returning the Writ: But he should be onely amerced for his contempt; and of that opinion were Walmsley and Walberton; for in not returning this Writ, the Queens commands neglected, which he ought to punish. But by Walmsley, If the party that sues the Writ, shews to the Sheriff, the party who is to be arrested, and delivers unto him the Writ, requiring him to make the arrest; if he doth it not, an Action upon the Case lyes against him; But here non constat, whether the party was arrested, or that the Sheriff could finde him; wherefore, &c. Kingsmil, although the Queen may promise the

the contempt, yet the party having losse by not returning the Writ, may have this Action also; and the Clerks said, There were many Precedents, that such Actions have been brought, wherefore absente Anderson adjournatur.

Case. 18.

Chandelor and Lopus. Pasch. 1 Jac. B.R. And in the Exchequer Chamber. Action upon the Case; whereas the Defendant being a Goldsmith, and having skill in Jewels, and precious Stones, had a Stone which hee affirmed to Lopus, to be a Bezars Stone, and sold it to him for a hundred pound, ubi re vera it was not a Bezars Stone; Defendant pleads not guilty, Verdict, and Judgement in the Kings Bench; Error was brought in the Exchequer Chamber, for that it is not shewn that the Defendant did warrant it to be Bezar, or did know that it was not so. And (Anderson onely against it) it was adjudged to be no cause of Action; and the Judgement was reversed. Croo. 2. 4. In the sale of a counterfeit Jewel.

SECT. IV.

Case 1.

Player and Warner, & alios in the Exchequer Chamber. Upon Trover and Conversion of two thousand load of Coals, the Defendants were found guilty of several loads, and severally, and not guilty pleaded for the residue, and entire costs, and one misericordia against the Defendants, and one misericordia against the Plaintiff pro falso clamore. And Error assigned, because the Judgement was against both the Defendants severally for the several damages, there being a Joynt-Trover laid to their charge: But it was adjudged for the Plaintiff, affirmed. And it was said, the Case did differ from Sir John Heydens Case. Croo. 11. 5. Croo. 1. 39. Trover. Pleading. Judgement.

Case. 2.

Swaine and others against Steephens. Hill. 7 Car. 1. B.R. Trover and Conversion; whether this Action be within the Statute of Limitations. Court held, that all Actions upon the Case shall be brought within such a time, and Trover is included in those general words, Actions upon the Case. 2. That the Proviso [that if the Plaintiff be beyond Sea] hee shall be saved; the same Equity shall be to the Plaintiff, the Defendant being beyond Sea. 3. That though barred by the Statute, as from the time of Conversion, yet requesting him upon his coming over from beyond Sea, to re-deliver it, and hee refusing it, if this be not a new cause of Action, and so hee is restored to his Action. And so it seemed to be by two Justices. Croo. 1. 178, 179. Within what time it must be brought. Act of Limitation.

Case 3.

Trover and Conversion against Husband and Wife, ad usum ipsorum; moved that the Action lyeth not against Husband and Wife joyntly for conversion to their uses, during Coverture, for shee cannot convert to her own use: But Trover will lye for conversion by the Wife before Coverture, or by the Wife onely during the Coverture: But it was adjudged Against Husband and Wife.

judged for the Defendant. Rhemes and Humfreys. Pasch. 8 Car. 1. B.R. Croo. 1. 184.

Case 4.

Basset and Bainard. A. sells a hundred load of Wood of his Trees to B. to be taken by the Assignment of the Bargainer, and after A. sells a hundred load to C. to be taken at his pleasure, B. assigns his Interest to D. the Vendor assigns, &c. C. takes them away, and D. recovered in an Action of Trover. Noys Rep. 32. See in case 20. at large.

Case 5.

About mony for the pasturage of Cattle.

Chapman and Allen. Trin. 8. Car. 1. B. R. Croo. 1. 197. It was resolved, that if Kine be put to one to pasturage, and after the owner doth sell them away to another, who demands the Kine of him that doth depasture them, who denies the delivery till hee be paid for his depasturing. Afterwards a stranger by the appointment of the first owner, payes what was due, and had the Kine delivered to him; that hee that bought them may recover the worth of them from him that kept them, and that the demand and denial was a Conversion, and that a man may not keep Cattle in such a Case, till hee be paid; as a Taylor, or June-keeper may, but hee must sue the owner of the Cattle for the Pasture

Case 6.

Pleads they were his own goods.

Rockwood and Feasar. M. 33, 34 Eliz. B. R. Action surtrover in London. The Defendant pleaded, that long time before the Conversion supposed to be, I. S. was possessed of these goods, as of his own goods at B. in Norfolk, and that hee, before the Conversion supposed, did casually lose them, and they came to the hand of Jo. Palmer by Trover, who gave them to the plaintiff, who lost them in London, and the Defendant found them, and afterward did convert them to his own use by the command of the said I. S. as was lawful for him to do, and it was moved, that this is no Plea, but amounts to the general Issue: But all the Justices held it a good Plea, for it confesseth the possession and property in the Plaintiff, against all but the Lawful owner. Nota, this Plea was devised by Cook, to alter the Tryal. Croo. 1. last publisht. 262.

Pleadings.

Case 7.

For mony found.

Holiday and Hicks. M. 40 Eliz. B. R. Action upon the Case, Sur Trover and conversion of five and twenty pounds; upon not guilty, a special Verdict; That the Defendant being Servant, and Factor of the Plaintiff, sold twenty Quarters of his Masters Corn for five and twenty pound, and converted it to his own use; and Judgement was given for the Plaintiff: But afterwards upon a Writ of Error it was reversed, and resolved, that this Action lyes not for mony found, unlesse it be in a Bagge, or Chest. Croo. 1. last publisht. 638. 661. And to this all the Justices and Barons agreed. Hill. 42 Eliz. in Camera Scaccarii; for when the Plaintiff lost the mony, hee lost the property also, because it cannot be known. Croo. 1. last publisht. 746.

Case

Case 8.

Vandrick and Archer. M. 32, 33 Eliz. Co. B. The Plaintiff declared, That where hee himself was possessed of seven and twenty Ells of Linnen Cloth, as of his own goods, the same came to the hands of the Defendant by Trover, and hee knowing them to be the goods of the Plaintiff, sold them, &c. and converted, &c. The Defendant pleaded, that as to four and twenty Ells of the Linnen Cloth, long time before the losing; one Copland was possessed thereof, ut de bonis propriis, and sold them to the Defendant, who before any notice that they were the goods of the Plaintiff, and before any request, sold them to persons unknown: And as to the other three Ells, hee was alwaies ready to deliver them to the Plaintiff, and yet it is upon these Pleas the Plaintiff did demurre: And it was adjudged for the Plaintiff upon the insufficiency of the Plea. Leonards Rep. pl. 304.

Pleaded they were his own goods.

Case 9.

Flewellin and Rave. M. 8. Jac. The Case was, That where A. B. and C. H. was indebted to C. in such a summe of money; and B. in such a summe of money was indebted to A. it was agréed betwéen A. B. and C. that B. in discharge of his debt unto A. should discharge the debt of A. unto C. in paying and delivering unto him certain commodities, which hée then had in his hands and possession, being properly the goods and commodities of A. and which B. by, and with the consent of A. did assume to deliver them unto C. in discharge of the Debt of A. unto him; and C. was contented to accept thereof: According to this agréement made betwéen them, B. did not, according to his promise and undertaking, discharge the Debt of A. unto C. by delivery of the goods unto him, but contrariwise did convert them to his own use: After the death of A. and for this C. brought his Action upon the Case for Trover and Conversion grounded upon this Deceit: And it was agreed to be actionable, and Judgement was given by the Court: For if a man give goods to deliver over to another if hee to whom this Bailment was first made to bail over contrary to the trust in him reposed, doth not deliver them over as hée was to have done, but convert them to his own use; hée hath by this deceit made himself liable to an Action, both of the first Bayler, and of the party to whom they were to have bée bailed over, and either of them may have this Action against him for this; but both of them may not have their Actions, but hee that first begins shall go on with the Action: And the Court agréed this clearly, That this not bailing over, and delivery of the goods by B. the first bailée in satisfaction of the debt of A. and according to the agreement betwéen A. and B. that this doth amount in Law to make a Conversion: And that by this hée hath made himself subject and liable to an Action to be brought by the party to whom hée should have delivered the goods. Williams, If one deliver a Déed to deliver over, and the party do not deliver it over accordingly, hee to whom it should be delivered, may have this Action against him. Dyer, 26. 21. pl. 125. 228. The whole Court agréed in this, that the Action brought by C. the Plaintiff, against the Defendant being the first bailer for not bailing the goods unto him according to the agréement, was well brought: And that here was a good conversion in Law. Bulstr. 1. 68.

Delivery of goods to deliver over.

Conversion what.

Case

Case 10.

About Muscats.

Action sur Trover & Conversion of a hundred Muscats, and sixty Monkeyes, and upon not guilty it was found for the Plaintiff, and moved in arrest of Judgement, because it was not shewed that they were reclaimed, as for a Hawk; but Judgement was given for the Plaintiff: So for a Parret, for they be merchandize and valuable. Grimes and Shack. Mich. 8 Jac. B. R. Croo. 2. Rep. 262.

Case 11.

About a Hawk.

Fines lost a Hawk, I. S. found him, and sold him to A. who gave him to Sir Jo. Spemer, who sold him over, and notwithstanding that hee knew the Hawk; yet hee is not in this case chargeable in an Action upon the Case upon the Trover, &c. And there it was said, that the Plaintiff ought to count expressly that hee was tame and reclaimed. But Southcote held, that the words hee was possessed ut de bonis propriis import as much. Dyer. 307.

Case 12.

Bailment of goods.

Southcots Case. Coo. 4. 83. It was resolved, If A. do deliver goods to B. for to keep, and the goods be purloyned away, yet B. shall be charged in a Writ of Detinue: For to keep, and to keep safely is all one. But if B. do take them to keep as his own goods, hee shall not be charged with them: And if A. do pledge goods unto B. and they be purloyned, B. shall not answer them, for hee had some property in them, and not a custody onely, and yet if hee keep them after the day, and tender of his money, let him look to himself. But a Ferry-man, Inne-keeper, or Carrier which taketh hire, they are to keep goods, delivered to them, safely, and they shall not be charged if they be stolen or purloyned: But a Factor, or Servant (although hee have wages) doing his indeavour, shall not be charged: And if that which is delivered in the first case be a Chest, and the Bailor keep the key of it, the Bailee shall not answer for any thing stolen.

Ferry-man. Inne-keeper. Carrier. Factor. Servant.

Case 13.

Bailment. Breach of trust.

Countesse of Salops Case. Coo. 5. 13. It was resolved, That when any thing is delivered to another without any trust or confidence; and hee to whom it is delivered, by negligence, suffer it to be spoiled, no Action will lye for this: As where Tenant at Will of a House tam negligenter & improvide custodivit ignem quod domus illa combusta fuit; But for a voluntary Act, an Action of the Case lyeth without entry against such a Tenant, as where hee shall voluntarily burn, or pull down the Houses, or cut the Trees, on his Tenancy at Will: So if my Bailee of my Horse, or other goods, voluntarily kill, or spoil it, I may have Trespasse, or perhaps this Action: But in Cases where there is a confidence joyned with the delivery, there for a permissive or negligent waste or spoil, this Action may lye: As where I deliver a Horse to one safely to keep, and the Defendant tam negligenter custodivit quod ob defectum interiit: So where I deliver to my Shepherd my goods or Cattle to keep, and hee suffer them, by his negligence, to perish, I may for this have this Action.

Negligent waste by Tenant at Will.

Trespasse.

Case

Case 14.

Howlet and Osborne. Hill. 37 Eliz. in Co. B. Assumpsit, the Case was, that one delivered ten pound to the Defendant to deliver to the Plaintiff, and the Defendant promised the Plaintiff to pay it to him, and upon this the Plaintiff brought this Action, and it was ruled, it will not lye. But Walmsly said, if the Plaintiff had given a day for the payment thereof, it had been good. Croo. 1. last publisht. 380.

Bailment of mony, no good consideration.

Case 15.

Sir John Ratcliffe and Davis, Trin. 8 Jac. B. R. In Trover for a Hatband set with Diamonds; The Case upon a special Verdict was this, The Plaintiff was possessed of the Hatband, and pawned it to one Whitlock for five and twenty pound, no time of Redemption was limitted, the Wife of Whitlock (her husband being languishing) by an assent of her husband delivered it to the Defendant; Whitlock dyes, the Plaintiff tendred the five and twenty pound to the Wife, being Executrix, which refused, and it was found that the Plaintiff demanded it of the Defendant, who refused to deliver it, and converted it to his own use; And it was adjudged for the Defendant, and resolved in the Case of a Pawn, That he that doth pledge it, hath time to redeem it during his life, and his death to whom it is pawned, is no impediment to it, but otherwise it is of the death of him that doth pawn it, for his Executor cannot redeem it, for albeit there be a condition, yet it is a personal condition that is annexed to it: And the tender of the five and twenty pound must be to the Executrix, and not to the Defendant, for the delivery of it, albeit it be upon consideration, produceth nothing, but a custody in him to whom it is delivered, and is not like to a mortgage. And it was held, that by the tender of the 25 l. and the refusal thereof, the property of it is presently reduced to the Plaintiff without claim: And it was held, that the Executrix shall have debt for the five and twenty pound against the Plaintiff; and that if the pawn be of a perishing nature, as Corn, Oyl, &c. and no time of Redemption is set, and the party pay not his mony till it be perished, and no default be in him that had it in pawn, he shall have debt for his mony, and the other no remedy for his goods. Yelvertons Rep. 178, 179. and Croo. 2. 244, 245. and Noys Rep. 137. Croo. 2. 244.

When a pledge shall be deemed.

Debt without a Contract.

Case 16.

Isaac and Clerk. Hill. 12 Jac. B. R. The Case was upon a special Verdict. Rich. Adams did recover against one Lewis in the County Court forty pound thirteen shillings four pence for damages; upon this a cap. ad sat. issued out against Lewis, and a Return made of a Non est inventus by Clerk the Defendant, Serjeant of the Mace, upon which a Writ of Fieri facias issued out against Watkins, one of his pledges to be executed upon his goods, and upon three Butts of Sack taken in execution; Isaac the Plaintiff being there present, and to stay the sale of these three Butts of Sack so taken by virtue of this Writ, the purse and two and twenty pound in it (for which the Action was brought) did (such a day and place) pawn and leave in Deposito) in the hands of Clerk, to the intent and purpose that he should keep the same usque 13 Martij next ensuing, being the Court day, and this onely as a pledge for the re-delivery of the said three Butts of Sack to Clerk, upon his request, if

Pledge.

Watkins

Watkins in the interim did not obtain from Adams, to spare the levying of this Execution; the Jury finde no request made, nor that Watkins had procured the sparing of the Execution: But they finde the request made by the Plaintiff of the Defendant, to deliver the purse, with the money in it, and his Refusal to do it: And if upon the whole matter, the Court shall judge it to be a Conversion, then they finde the Defendant guilty: But if they shall judge this no Conversion, then they finde the Defendant not guilty: It was adjudged against the Plaintiff. Bulstr. 2. 314.

Case 17.

Denial a Conversion.

East, Executor of I. S. brought an Action upon the Case of finding and converting of certain goods against Newman, and upon not guilty pleaded, the Jury found the special Verdict, viz. That the Testator was possessed of divers goods, and them lost, and the Defendant found them, and knowing them to be the goods of the Testator, upon demand denied to deliver them, and if this denial was a Conversion, they prayed the discretion of the Court. Fenner] I think that the denial is a Conversion, for when I lose my goods, and they come to your hands, by finding, and you deny to deliver them to mee, I shall have an Action of Trespasse against you, as 33 *Hen.* 6. And the very keeping of Goods by an Executor shall be counted as an Administration, and by the same reason, the denial here shall be counted a Conversion. Gawdy, I am of the same opinion, for by 2 of Hen. 7. If I deliver you Cloth to keep, and you keep it fraudulently, I shall have Detinue, or an Action upon the Case at my pleasure, and by 20 *H.* 7. If a Baker contract for Corn, and the party do not deliver it at the day, the party may have debt, or an Action upon the Case, Fanfield.]

Detinue.

Debt.

Case 18.

Request, denial to deliver.

There was a Case in this Court, 30 Eliz. for the finding, and conversion of a horse; but here was no request made by the Plaintiff to deliver the horse, for which Judgement was given against the Plaintiff, Curia] This is not like our Case, for the Request and denial makes all the wrong in this Case, & Adjournatur.

Case 19.

Plea in Trover.

Per Popham] If a man finde my horse, and after ride him, and then delivers the horse unto mee, and I bring an Action of Trover for the Conversion, it is no Plea that you have delivered the horse to mee before the Action brought, for you ought to answer to the Conversion.

Case 20.

Bargains of Wood to be taken by Assignment, how to be taken.

Basset and Mainard. P. 43 Eliz. B. R. Action sur Trover, and Conversion of certain loads of Wood; upon a special Verdict the Case was: Sir Thomas Palmer was seized of a great Wood, and bargained and sold to one Cornford, and his Assigns, as many Trees as would make six hundred Coards of Wood, to be taken by the assignment of Sir Thomas Palmer: Cornford assigns over his Interest to the Plaintiff: Afterwards Sir Thomas Palmer granted to the Defendant so much of his Wood, as would make four thousand Coards of Wood, to be taken at the Defendants Election: The Plaintiff afterwards by the assignment of Sir Thomas

Thomas Palmer cut down the Trees in question, to make six hundred Coards: And the Defendant claiming them by virtue of his grant took them: And it was found, that there was sufficient wood left for the Defendant to take his four thousand Coards; & si, &c. And upon this Verdict, it was moved, that here was not sufficient title found for the Plaintiff: For first, it is not found, that the bargain and sale was for any summe of mony, nor upon any consideration, sed non allocatur; for it is intended to be so, being found by the Verdict: But if it had not been so found, it might peradventure have been otherwise; as Primo Mariæ. Dyer. 91. is. Secondly, it was alledged, that this grant to the Plaintiff is void; for until the assignment made by Sir Thomas Palmer, no interest vested in Cornford himself, so as hee could not make any grant over: But all the Court held the grant to be good, for being made to him, and his Assigns, hee may make an Assignee, which shall enure as a nomination to one, who is to have by the appointment of Sir Thomas Palmer; and it may well vest in him as the interest also: And here hee hath an interest before the Assignment made by Sir Thomas Palmer; insomuch as if Sir Tho. Palmer will not assign it in convenient time, hee himself might take them; and therefore hee may assign this interest, as 44 Ed. 3. 43. is. But, admitting the grant to the Plaintiff had been void: yet Popham said, that the Action was maintainable, because by the cutting down of them hee had possession, and a good title against the Defendant, and every stranger; and being cut down, it was not lawful for the Defendant to take them: For if one sells a thousand Coards of Wood to be taken at the Vendees Election, and afterwards, the Grantor himself, or a stranger, cuts down parcel of the Wood, the Vendee cannot take that which is cut down: But hee ought to make his grant good out of that which is growing: As if Estovers were granted unto him, to be taken in a great Wood, and the Owner of the Wood cuts down some wood, the Grantee cannot take that which is cut down, but hee must take his Estovers out of the residue: And if all be cut down, hee hath not any remedy, but an Action upon the Case: So here, although the Plaintiff had not a good Title, yet his having possession of them, being cut down, sufficeth, quod Gawdy & Clinch concesserunt; wherefore it was adjudged for the Plaintiff. Croo. 1. last publisht. 819. and Noys Rep. 32.

Case 21.

Ledesham and Labram. *H.* 44 Eliz. B. R. Action sur Trovers of ten Angels, and converting of them: The Defendant pleads, that there was a wager betwixt the Plaintiff, and one Currance concerning the quantity of yards of Velvet in a Cloak; and the Plaintiff, and the said Currance, each of them delivered into his hand ten Angels, and each of them agreed, that if there were ten yards of Velvet in the Cloak, that the [illegible]hey should be delivered to the said Currance, and if not to the Plaintiff; and alledgeth in facto, that upon measuring of the Cloak, it was found that there were ten yards of Velvet therein; whereupon hee delivered them to the said Currance, which is the same Conversion, &c. And it was thereupon demurred, and agreed; first, than an Action of Trover lyes of mony out of a Bagg, or Chest: But for the Plea, Gawdy held it to be good enough, for the measuring thereof is the fittest way for the trying it; And when it is so found by the measuring, hee hath good cause to deliver them out of his hands to him, who had wonne the wager. But

Wager.

Mony out of a Bagge.

Fenner and Popham held, that the Plea was not good; for it may bee, that the measuring was false, and therefore he ought to have averred in facto, that there were ten yards, and that it was so found upon the measuring thereof: And hee might well have pleaded the general Issue, and given all the matter in evidence; for it is but evidence; and when he delivered it, according to the intent of the bargain, it is not any Conversion; wherefore by the assent of Gawdy, absente Clinch, it was ruled, that Judgement should be given for the Plaintiff, unlesse other matter were shewn, &c. Croo. 1. last publisht. 870. Ejusdem. p. 363.

Case 22.

Taylor and Chambers. P. 3 Jac. B.R. Action sur Trover, of a Silk Quilt, a Testure of a Bed, five Silk Curtains, a Petticoat and a Cloak. The Defendant quoad all besides the two last, pleaded not guilty; quoad them hee pleaded, that the City of London is an antient City, and that within the same is a Market every day for all goods to be sold in every part of the City, in every open Shop, every day besides Sundaies and Holy-daies, betwixt Sun-rising, and Sun-setting, so as one of the Contractors be a Free-man, and that hee being a Free-man of the Company of Mercers, such a day, not being Sunday, or Holy-day, bought those things in his open Shop, wherein hee had of long time used to buy such Wares, of one Hen. Cooper, for such a summe, and so justifies the Conversion: and upon this Plea the Plaintiff demurred: And upon the first motion at the Barre, all the Court conceived that the Plea was not good; for the Custome is to general, that every Free-man might buy all manner of wares in every Shop, &c. for then a Scrivener might buy Plate in his Shop, and the like, &c. which is not reasonable: And here hee being of the mystery of Mercers, to buy Petticoats and Cloaks, &c. It is not agreeable to his Trade. And Popham said, that it had been resolved, that such Custome being found by a special Verdict, was unreasonable; wherefore it was adjudged for the Plaintiff. Croo. 2. part 68. Yelvertons Rep. 178, 179.

Custome of *London*, Market day every day. Market place every shop.

Case 23.

Catford versus Osmond. Mich. 16 Jac. B. & Gold. Action of Trover brought for two Steers, the Defendant being an Attorney of the Common Pleas, justifies the taking as under-Sheriff, by reason of processe from the Exchequer to buy of the occupiers of the Land of divers persons in a Schedule in the said Writ, named the debts therein specified, and doth not recite the Schedule; and hee being under-Sheriff, tok the Steers in the Land of the Plaintiff, which was lately one Stones, who was debtor to the King in nine and fifty shillings, being behinde upon the Land; and exception was taken, for that it was not directly alledged that the Land such a day was the Land of the said S. The Writ commanded to levy the summs in the said Schedule mentioned, and if they could not, to take their bodies; and it was adjudged a good warrant to levy of the Occupiers of the Lands that were the said S. fifty nine shillings.

For taking of Cattle by warrant out of the Exchequer.

SECT.

SECT. V.

Case 1.

CArlion and Mill. H. 8 Car. 1. B. R. Action upon the Case against the Apparator of the Bishop of Exceter, for falsly and maliciously causing the Plaintiff to be convented before the Consistory there, for incontinency, where there was no cause nor fame of any such thing; moved in arrest, &c. Because hee did it as an Informer by virtue of his office. Court. An Action well lyes, for it is averred hee did maliciously, &c. without any Cause. Judgement for the Plaintiff. Croo. 1. 222. Malicious Suit.

Case 2.

Moyser and Gray. Hill. 11 Car. 1, B. R. It was commanded the Defendant, being a Mayor, to accept of pledges of I. S. and to deliver his Cattle distrained for Rent: The Defendant pleads that I. S. delivered him three pound ten shillings in mony for pledges: It was upon Demurrer adjudged a vicious Plea, for hee may not do so, but must take men-pledges, at least one pledge according to the Law. Croo. 1. 322. Pleading.

Case 3.

Stone and Lingar, and others. Trin. 12 Car. 1. B. R. Action upon the Case was brought against them as Constables, whereas the Plaintiffs were Inhabitants, and possessed of Lands for years in the Parish of St. Martins, and were there liable to the payment of all duties for the reparations of the Church of the Parish, and to all Taxes within the same; And that the Defendant being Constable of Roxborough, falsly presented, that they were Inhabitants in the Parish of Roxb. and possessed of Lands in the Parish of Roxb. and chargeable there to the payment of such duties, by reason whereof they were compelled to pay such summes unduly, for which they brought this Action; and the Defendant was found not guilty; but had not double costs upon 7 Jac. chap. 5. but single costs onely, upon 23 H. 8. Croo. 1. 336. Making a false Return of a presentment. Costs.

Case 4.

Salteston and Offly against Paine. Trin. 33 Eliz. B. R. The Plaintiffs, Sheriffs of London, brought an Action upon the Case, for that the Defendant being in Execution under their Custody, for fifty three pound at the Suit of Spicer, hee escaped, the said Spicer not satisfied, for which they were compelled to pay the debt. The Defendant pleads, confessing all the matter, and that after his escape Spicer had acknowledged satisfaction upon Record: And upon this it was demurred, and adjudged clearly for the Defendant against the Plaintiff; but held clearly, that an Action upon the Case lyeth against a prisoner for an escape out of execution, to the intent to make the Sheriff chargeable with the debt. Croo. 1. last publisht. 234. F. N.B. 130. 13 H. 7. 2. 14 H. 7. 1. Upon an escape

Case 5.

Langton and Gardiner, Pasch. 38 Eliz. B. R. Action upon the Case

Against a Sheriff.

against the Sheriff of the County of Surrey; whereas the Plaintiff sued a Latitat against D. intending to declare for debt on an Obligation, and thereupon the Defendant arrested him, and at the day returned Cepi corpus, & paratum habuit, &c. And for that hee appeared not at the day hee brought this Action, and it was demurred; and the Sheriff shewed to the Court, that hee had taken Bond according to the Statute; but this not being pleaded, the Court could not take notice of it; wherefore it was adjudged for the Plaintiff. Croo. 1. last publishe. 450.

Case 6.

Sheriff suffer an escape.

Barton and Adleworth. Mich. 40 Eliz. B. R. Action upon the Case; whereas hee pursued a Latitat against I. S. intending to declare in debt upon an Obligation of a hundred pound, wherein hee was bound to him, and delivered that Writ to the Sheriff of Bristol to execute it, and advertised him of the cause of Action, and his intent to declare against him in debt, &c. And that the Defendant being Sheriff, arrested him by virtue of the said Writ, that the Defendant had let him at large absque aliqua securitate inventa for his appearance, and at the day returned Cepi corpus, and that the said I. S. did not appear at the day, but bid himself: And that upon a Habeas corpus awarded, hee returned paratum habeo, which was false, whereby the Plaintiff was delayed in his Suit, whereupon hee brought this Action. The Defendant pleaded, that hee tok Sureties according to 23 H. 6. and traverseth, that hee let him at large, &c. And it was thereupon demurred. The Court held the Plea and Traverse good; for the Statute appoints him to let at large upon Bail, and therefore hee is compellable to take Bail; and it is in his discretion what Bail to take. And Popham said, if hee take one Surety, it is sufficient; wherefore it was adjudged for the Defendant. Croo. 1. last publishe. 624. See 625. also.

Case 7.

False Return of a Sheriff.

Parks and Mosse. P. 32 Eliz. B. R. Action sur Trover; The Defendant pleaded a Recovery against I. P. and that a Fieri facias was awarded to the Sheriff, and after the Writ awarded and delivered to him; I. P. dyed possessed of the goods, and made the Plaintiff his Executor, and afterwards the Defendant by force of the Sheriffs warrant, tok these goods in Execution, as Bayliff to the Sheriff, and delivered them to him, the Plaintiff, that the Sheriff returned upon the Writ Tarde; and upon this it was demurred in Law; and resolved, that the party dying after the Writ of Execution was awarded, and before it was served, that it may be served to the hands of the Executor or Administrator; for by the Execution awarded, the goods are bound, and the Sheriff need not to take notice of his death. 28 H. 7. 5. Dyer. 76. And that the false return of the Sheriff shall not make the Bayliff punishable; for that he did lawfully, being a Bayliff Errant, and a meer Servant to the Sheriff, and not a Bayliff of a Franchise. Croo. 1. last publishe. 181.

Case 8.

Baldrie and Johnson. Hill. 42 Eliz. Co. B. Action upon the Case against the Defendant, Gaoler of the Prison in Bury; for that a plaint being before the Bayliff of the same Title according to the Custome there, they

they directed a warrant to the under-Bayliffs to take the party, ita quod habeant corpus ejus coram Ballivis ad proximam Curiam ibid. tenend. viz. such a day: And the under-Bayliffs arrested him, and committed him to prison sub custodia of the Defendant: And after Verdict for the Plaintiff it was moved in arrest of Judgement. That this Action lyes not against the Defendant, for the prisoner was not committed to him by any lawful authority: For the under-Bayliffs had authority to take him ita quod, but to commit him to any other person, for that is on their own head: And into whatsoever place they shall commit him, they shall retain him but as Servants to the under-Bayliffs, and it is as the under-Bayliffs house: And an Action lyes against them, if they have him not at the day, &c. and not against any other. Croo. 1. last publisht. 743.

Undue proceeding.

Case 9.

Thurston Uernions. Error to reverse a Judgement in Bristow, in an Action upon the Case, declared, That the Defendant brought an Action against him at the Suit of Hall, and without his privity, and therein did arrest and imprison him, by reason whereof all his Creditors came upon him, and thereby hee had lost his Credit, &c. Judgement was affirmed upon this difference, where a man that hath a just debt sueth, and by this occasion all the Creditors fall upon the Debtor with Suits, and hee is undone: But where another shall do it without his privity in the name of him without whose privity hee doth it; there this Action of the Case will lye. Trin. 15 Car. 1. B. R. March. Rep. 49.

Suing of one in anothers name without his privity.

Case. 10.

Waterer and Freeman. The Case was, That the Defendant had at Westminster sued out a Fieri facias upon a Judgement given against him for the Defendant, in Trespasse, who tok the Plaintiffs goods to the value of the damage, and so made his return, and that the goods remained in his hands pro defectu emptoris: And that the Defendant knowing this to be to the intent to vex and double charge him, afterward sued out another Fieri facias to the Sheriff, who delivered it to the same Sheriff, who levied it of other goods of the Plaintiff, and paid it over to the Defendant: And it was adjudged for the Plaintiff. Hobb. pl. 257. and 350. and Brownl. and Goldsb. 12.

For a double vexation.

Case 11.

Adams and Ward. Trin. 21 Jac. It was said, in an Action upon the Case between one Adams, and Ward an Attorney, that whereas one Hennings sued Adams in an Action of debt, and Adams retained Ward to be his Attorney, and gave him warrant to plead the general Issue, and Ward suffered the Judgement by nihil dicit, that this was not any cause of Action, except it was by Covin, and if hee had not said his Declaration so in this Case, hee could not have recovered: And at another day it was agreed, that the Covin was not traversable by Plea, but onely in Evidence at the Barre. Winch. Rep. 90.

Attorney, deceit in him.

Case 12.

Apleton and Burr. M. 34, 35 Eliz. B. R. Error of a Judgement in the

Escape.

the Common Bank in an Action of the Case against the Plaintiff, Sheriff of E. for suffering a prisoner to escape that was arrested by a Capias upon an Original Writ; and Judgement was there given for the Plaintiff, and affirmed here in a Writ of Error. Croo. 1. last publisht. 289.

Case 13.

Hawkins and Mildmay. M. 41 Eliz. B. R. Action upon the Case against the Defendant, for that upon a Capias directed to him against I. S. hee being Sheriff of Essex, directed his Warrant to such a Bayliff of a Liberty, to arrest the said I. S. who arrested him accordingly; and that the Defendant well knowing thereof, had, notwithstanding upon the day of the Return, returned a Non est inventus; and upon this account the Defendant demurred: And it was resolved by the whole Court, that the Writ well lay for this matter. And Anderson said, If the Sheriff in this Case had returned, That hee had sent to the Bayliff of the Liberty, &c. who had given him answer, that hee had arrested the Body, it had been good, and the Sheriff should have been discharged, and processe should have issued against the Bayliff of the Liberty, to bring in the Body: But here in the principal Case, the Writ abated by the death of the Plaintiff before the Judgement. Croo. 1. last publisht. 729.

Action gone by the death of the Plaintiff.

Case 14.

Escape and Return of a Sheriff.

Boles and Lassells. M. 43 Eliz. B. R. Action upon the Case, where a Latitat was directed and delivered to the Sheriff of the County of Not. against I. S. arrested by him, and hee set him at large, and after returned Languidus in prisona, whereby hee was delayed, &c. And the Defendant confessed the receipt of the Writ, and Arrest, and saith, hee did afterwards bail him according to the Statute of 23 H. 6. And hereupon a Demurrer. And it was adjudged for the Defendant; for, for this return hee is onely finable. Croo. 1. last publisht. 852. Noys Rep. 39.

Case 15.

Parkhurst versus Powell. Mich. 15 Jac. Br. & Gold. An Action of the Case for a false Return of a Capias utlegat. and declares that hee prosecuted a Capias utlagat. directed to the Sheriff of Denbigh, where the Defendant inhabited, and delivered the said Writ to the Sheriff to be executed, and the Defendant being then in the company of the Sheriff, and might safely have arrested him, did not, but suffered him to escape, and returned that hee was not to be found; and upon not guilty pleaded, it was tryed in the County of Middlesex, where the Action was brought; and moved in arrest of Judgement, that the tryal ought to be in Denbigh, because the not arresting was the principal matter, but because the Action was grounded upon double matter, the Plaintiff had his election to bring his Action, either in the County of Denbigh or Middlesex, by the whole Court.

Escape by a Sheriff. False Return.

Case 16.

May against Proby, and Lumley, Sheriffs of Midd. for suffering William Allen, who was arrested at his Suit upon a Bill of Middlesex for three and thirty pound to escape, they were sued in an Action upon the Case: The Sheriffs plead, that after the arrest, they leading him towards London to the Gaol, hee was rescued from their Bayliffs by I. S. and

and I. D. And it was thereupon demurred, and at last adjudged for the Defendants; for the arrest being upon a mean processe, and not upon execution, the Sheriff is not bound to take the posse comitatus with him, and therefore in such Cases the Rescous is a good Return, and to say that afterward hee was not found in their Bailywick, and thereupon processe shall go against the Rescussors: But if the prisoner had been once in the Gaol, the Sheriff ought then at his peril to keep him safe, and a Rescous from thence is no excuse for him. And upon processe of execution, as Cap. ad Sat. and Cap. utlagat. After Judgement such a Return is no excuse for him, either against the King, or party, for hee at his peril must keep his prisoners, for there his processe is determined, and hee cannot have the same Writ again, as hee may in the principal Case here: For here hee may renew his Writ, and have also his Action upon the Case against the Rescussors; it was adjudged for the Defendants, Vide 3 H. 6. Attatchment 1. Dyer. 212. 16 Ed. 4. 3. 8 H. 7. 12. Croo. 2. 419. Hill. 14 Jac. B.R.

Where a Rescous is a good Return.

Action upon the Case against Rescussors.

Case 17.

King against Sir Euseby. Action upon the Case, for suffering one Burdet to escape, who was indebted to him in seventy one pound, and arrested upon a Latitat sued out by him, intending upon his appearance and bail given to declare for that debt, where hee was arrested by Sir John Isham the former Sheriff, and left in prison, the Defendant suffered him to go at large without finding Sureties for his appearance, upon not guilty, all this was found by Verdict, That Sir Jo. Isham arrested him, and at the day, &c. returned Languidus, &c. and afterwards in exitu ab officio suo delivered him unto the Defendant as a prisoner for this cause, and the Defendant suffered him to go at large. Quid it, &c. And without Argument it was adjudged for the Plaintiff, for this permission to escape is just cause of Action: For by this hee is debarred or delayed of his Action: And although it be found, that the other Sheriff returned Languidus, &c. which is more than is in the first Declaration, yet that is not material to the Plaintiff, hee remaining alwaies in prison, and that was to excuse his bringing of the prisoner at the day; wherefore it was adjudged for the Plaintiff, Croo. 2. 380.

Escape.

Case 18.

Weald and his Wife, and Pease. Action upon the Case was for this; That the Vicar of the Parish had falsly and maliciously presented them in the Spiritual Court, that they made Hay on the Sunday, &c. whereupon they were cited and vexed; it seemed by the Court not actionable, for the Action should have been brought by the Husband alone; and this presentment was in a course of Law. Croo. 2. 355.

Vexatious Suits

Case 19.

Lady Waterhouse and Bawd. M. 4 Jac. B. R. Action upon the Case; It was resolved by the Court, that no Action of the Case will lye against a Parson, for suing in the Spiritual Court for a thing demandable there, although happily hee have no cause of Action, as for Tithes of Grass, Trees, or the like: But if any man shall sue in the Spiritual Court, for a matter which appears by his Libel, is not suable there, nor the said Court hath any Jurisdiction of, but the Common-Law hath Jurisdiction; there

Suing in an improper Court.

there an Action of the Case lyeth: But if a Suit be there for any thing demandable, by any thing which appears by the Libel, and by the Defendants Plea, or by any Collateral matter, hee is barrable there, no Action of the Case lyeth: And it was there held by the Court, that where a Statute doth prohibit a thing, and adds no penalty, that an Action will lye for doing against the prohibition of that Statute: But it must be laid tam pro Rege, quam pro seipso, and this Action being brought only by the party, and not tam pro Rege, &c. therefore they all held, though otherwise an Action may lye, yet for this cause it was not well brought; wherefore it was adjudged for the Defendant. Cro. 2. 134.

Case 20.

Suit for the same thing twice.

Bray and Partridge. B. brought an Action upon the Case, that P. sued for Tithes, and recovered, because there was nisi testis singularis to prove the payment, when in truth hee had paid it before two, but now one was dead. Adjudged, that this Action doth not lye, because the Cause was meerly Spiritual; and it differs from 8 Ed. 4. 13. For there the Composition was a temporal Contract, although it was for Tithes. Noys Rep. 37.

Case 21.

For executors, or not.

Mason and Bavy against Dixon. Trin. 2 Car. 1. B. R. The Sheriff arrests A. upon a Latitat at the Suit of B. A. escapes, B. makes Executors, and dyes: And they bring an escape, and it was doubted if it lyes, the Judges were divided, because it is but upon a mean processe, and not as where it is upon an Execution. Coo. 5. 27. Trover by an Executor for a Conversion lyeth in vita Testatoris; and there this difference agreed, That the Executor shall have the Action, where the thing it self is to be recovered, but not where damages onely are to be recovered. Noys Rep. 87. Latch. Rep.

Case 22.

Escape.

Moore and Sir George Reynell, Marshal of the Marshalsie, in Action upon the Case, the Case was in effect, The Plaintiff had a Judgement for debt in the Common Pleas, and the Defendant was out-lawed after Judgement, and upon a Cap. utlagatum hee was arrested, and the Marshal suffered him to escape; and it was adjudged for the Plaintiff, albeit the Plaintiff never prayed hee might be in execution, and albeit hee did escape against the will of the Defendant; and there agreed, That in all Cases where the Defendant may have a Cap. ad Sat. and the Defendant is taken by a Capias pro fine, there hee shall be in execution presently, if the Plaintiff will, without any prayer: But where the Plaintiff hath a Judgement, and lets passe his time, so that hee cannot presently by Capias, nor by Fieri facias, there if the Defendant be taken by a Capias pro fine, hee shall not be in execution without prayer. Bridgm. Rep. 7.

Case 23.

Sheriff not arresting, having a Writ.

Parkinson and Powell. In an Action of the Case, brought in the County of Midd. declares, that hee had recovered against one A. in an Action of debt, and had a Cap. utlagatum, and that hee had delivered it to the Defendant, being Sheriff, &c. And that the Defendant was often in his company after, within his Bailywick, and that yet hee had

returned

returned a non est inventus; and Judgement was given for the Plaintiff; And that the Action was well brought in Mich. where the Common Bench is, albeit the ground of the offence be in Denbigh. Noys Rep. 22.

Case 24.

Laycock and his Wife against the under-Sheriff of Wiks, in an Action upon the Case; They shewed that they had sued a Latitat against Wilmot, and that the Husband had delivered it to the under-Sheriff, when W. was in presence, and that hee was the under-Sheriff appointed, and did execute that office, and yet hee returned non est inventus in deceptionem; and upon this the Action was brought; but the Court seemed to be against it, and that it cannot be brought against the Under-Sheriff, for he is no Officer to the Court, for the Sheriff himself is to be amerced for all defaults, neglects, and falsities of the Under-Sheriff, but he shall not be imprisoned for him. Noys Rep. 90. Sheriff not arresting, false Returning.

Case 25.

Lemasons and Dicksons Case. B. R. M. 2 Car. 1. The Case was, one Pierceval Sherwood was indebted to Susan Clark, who brought an Action of debt by a Bill of Middlesex, which is in nature of a Writ of Trespasse against him, and Sherwood upon a mean process was arrested by the Defendant (being Bailiff of the Liberty of White-Chappell) and being in his custody, he suffered him to escape; after Susan Clark made the Plaintiff her Executor, and dyed, and then the Plaintiff brought the Action against the Defendant upon this Escape, and no Judgement was given, but the Judges seemed to be divided, or rather to incline against it; That this Action will not lye for the Executor, after the death of the Testator, for that rose in the life of the Testator; but if the Escape be after his death, for that it will lye: But they all agreed, if it were upon an Escape after Judgement, that the Action would lye by the Executor. Popham Rep. 191. Bayliff suffer an Escape. Executor sue upon an Escape.

Case 26.

Shoftbey, and Waller, and Bromley, Pasch. 7 Jac. In the Exchequer. Action upon the Case; The Case was, W. and B. conspired that B. should commence a Suit against the Plaintiff, then dwelling in Middlesex, and worth five thousand pounds, and that the Defendants knowing thereof, maliciously and falsly agreed, that the said B. should sue the Action in London, and prosecute it till the Plaintiff were out-lawed in the late Suit, to the intent that his goods should be forfeited to the King; and after, in performance of the Agreement aforesaid, the Plaintiff suggested that he was dwelling in London, and laid his Action here, which was prosecuted until the Plaintiff was here out-lawed, to his damage, &c. and it was adjudged for the Plaintiff. Lanes Reports. Conspiracy for a vexatious suit.

Case 27.

In an Action sur le Case, it was resolved per totam Curiam, that if a Sumner return one certified upon his Oath in Court Christian, where in truth hee was not, and he is pronounced Contumax, and after he is excommunicated, he shall have an Action sur le Case, for here is injuria & damnum; and in such Case the Plaintiff shall have Judgement to recover False Return by a Sumner.

sover, for although the proceeding and Oath touching this matter, are Ecclesiastical, yet the damage is temporal, for he is disabled to sue in any Court.

Perjury.

Where Action may lye for this.

And it was resolved, that Perjury, by which damages do accrew, may be punished as a Misdemeanor at the Suit of the King; and also the party may have an Action upon the Case to recover damages, for it should be a very great defect in the Law, and encouragement to the parties, if men may commit perjury with impunity: And for that reason if Jurors use perjury themselves, an attaint lyeth at the Common Law; for so it appears by Glanvil. lib. 1. cap. 29. 18 H. 8. title 72. 6 H. 3. ib. 73. &c. 75. and in the time of Ed. 1. Attaint 70. for the first Act, which gave the attaint, the Statute of Westm. 2. cap. 38. vid. F. N. B. 109. vid. 2. 7 H. 6. 25. One who was to be a pledge affirmed upon his Oath, that he could dispend forty shillings per annum, and upon examination, he confessed it false, for which he was committed to the Fleet, until he made a Fine, which proves that the false Oath was the wrong and injury, and punishable by the Law, & ex consequenti, when damage follows to the party, he shall have remedy by Action upon the Case. In like manner it was agreed, that if one make a false Affidavit, by which the party is arrested and molested by process of contempt, he may have an Action sur le Case, and recover damages; and although that when the matter is meer Ecclesiastical, the Court Christiane may punish pro salute animæ, yet they cannot award any damages to the party, for if one mother holy Order be beaten, they may proceed against the Delinquent, pro salute animæ, but the Priest ought to recover his damages by Action of Battery: for notwithstanding that, they may punish the false Oath in the Case as the Same, for Perjury any false Certificate, yet the party grieved shall recover his damages at the Common Law, this although the matter be meer Ecclesiastical, for if the party grieved hath damages, or that he any wrongful proceedings of the Judge, by contradictes, by Negligence, or default of any Minister, or by unjust prosecution of the party, the party grieved may have an Action sur le Case, and recover his damages.

Spiritual Court

Doct. and Stud. 118, 119. Action sur le Case lyeth against the Ordinary, for a wrongful excommunication touching any thing out of his Jurisdiction, so there be many good Cases; and the Case in Fitz. 47 H. 6. 8. If an Arch-Deacon refuse to induct the Clerk, &c. he shall have an Action upon the Case, which was affirmed for good Law by all the Court, which agrees, 26 H. 8. 3. 2. and true it is, that it is held in 48 H. 6. 14. That in such Case he shall have remedy against the Arch-Deacon, to punish him; but during the suspension there, they cannot award him damages in such Case, but he shall recover them at Common Law. Fog F. N. B. 92. If a man procure against a prohibition, the party may have an Action upon the Case against him for maintaining in Court Christian, vide Trin. 20 Ed. 3. Rot. 46. in the Exchequer. Richard Tresils Case, where he recovered damages against the Bishop of Norwich, by him excommunicated after prohibition; Episcopus adjudicatur esse illicitus et in grave gravamen Authoritatis Regiæ, & quærens receperavit decem mille libras, simile. Pasch. 13 Ed. 3. Rot. 78. Philip de Hardeshal's Case. Hill. 32 Ed. 3. Rot. 78. Sir Thomas Seaton, Knight, recovered against Lucy, who was the wife of Robert Gocksick, for suing to Rome, pro transgressione facta per ipsum Thomam, pro captione bonorum & catallorum suorum & pro debitis & inde pronunciavit esse contra eum excommunicationis, &c. he recovered damages by Verdict to the value fourty pounds, &c. Trin. 37. Ed. 1. 15. Lofty were recovered against the Arch-Bishop of Canterbury, forty

pound

pound pro damnis, per quod ipsum excommunicavit pro executione brevis Regis pro manu fortia amovenda; ideo Episcopus capt. Mich. 29 Ed. 3. Rot. 19. similiter. And divers other Records you may see in my Book of Precedents. Coo. part 12. 128, 129. Trin. 16 Jac. Rot. 590. Margaret Evans against Wilkins. Action on the Case, for that the Plaintiff the 12 Septembr. 15 Jac, did retain the Defendant to be her Shepherd, &c. and that the Defendant, in consideration of six pence to him paid by the Plaintiff, and of three and thirty shillings four pence of his sallery to be paid to him for a year, and in consideration that the Plaintiff did assume to pay the three and thirty shillings four pence to the Defendant, and to finde him meat, drink, and lodging for the said year, and to permit the Defendant to have pasture for twelve Sheep, with the Sheep of the Plaintiff, did assume to serve the Plaintiff as a Shepherd for one year from Michaelmas next, &c. and to keep her Sheep, to which the Plaintiff giving credit, did not retain any other Shepherd; and the Plaintiff did averre, that shee was ready to pay the Defendant the said three and thirty shillings four pence, and to provide him meat, &c. and to permit him to have pasture for twelve Sheep, with the Sheep of the Plaintiff, yet the Defendant did not keep the Sheep of the Plaintiff, although required, the 4 October, 15 Jac. whereby many of her Sheep dyed, ad damnum forty pound. And after, scil. Hillar. 16 Jac. Judgement was given for the Plaintiff by all the Court. Coo. 12. 128. Assumpsit.

Case 28.

Dampport and Simpson. M. 38 Eliz. Action upon the Case, the Plaintiff declared, that hee had given one Spilman certain Jewels to traffick with them beyond the Seas, and that hee had not sold them, but delivered them to the Defendant, who had spoiled them, whereupon the Plaintiff brought an Action against Spilman, and upon not guilty pleaded, they were at Issue, but the now Defendant at that evidence did upon his Oath say, that the Jewels were worth but two hundred pounds, whereas they were worth eight hundred pounds, by reason whereof the Jury gave indeed but two hundred pound damages, and for this false Oath he brought this Action; upon not guilty, found for the Plaintiff, and assessed five hundred pounds damages. And now moved in arrest of Judgement, that the Action will not lie; But so it was adjudged. Owen 158. See 20 H. 7. 11. Dyer 248. Perjury in a Court.

Case 29.

Knight and Copping. M. 19 Car. 1. Co. B. Robert Knight brought an Action against Valentine Copping, one of the Attorneys of this Court, and found, That whereas one Edward Lock had brought an Action of debt for twenty pound against him, and thereupon such proceeding was, that a non suit was entred, and Costs of thirty shillings assessed for the now Plaintiff, the now Defendant being Attorney for the said Edward Lock having notice thereof, unjustly and maliciously procured a Judgement to be entred for the said Edward Lock against the now Plaintiff, and then Execution against him, whereby he was taken and imprisoned till he was delivered by a writ of Supersedeas. And the Plaintiff had Judgement. Hutton Rep. 125. 126. For entring of a Judgement after a non suit.

Case 30.

For taking of insufficient Bail.

Metcalfe and Hodson, Pasch. 8 Car. 1. Co. B. The Case was, Metcalfe brought an Action upon the Case against H. and W. late Sheriffs of the City of York, and Count, that whereas, time out of memory, there was such a Court there had power to arrest, and take bail, &c. And that there the Plaintiff had brought an Action against one Smith, the now Defendants (being Sheriffs) had taken insufficient bail of him, &c. And in this Case it was adjudged, that this Act was done by them as Judges, and for this Judicial Act, no Action lay: But if it had been with fraud, or corruption, as for reward, or the like, there it may be otherwise, and so it is for the Polls taken in the Kings Bench, Common Bench, and Exchequer; for what they do in this, shall be taken as done by them as Judges of the Court, and not as Gaolers. Hutton. Rep. 125.

Case. 31.

Practice to delay a Suit, suffering an escape

Cockshall and the Mayor of Boalton. M. 31, 32 Eliz. Co. B. H. Cockshall brought an Action upon the Case against the Mayor, Town-Clerk, and Gaoler of Boalton, &c. and declared, that where he had affirmed a Plaint of Debt in the Court of the said Town before the Mayor, &c. against I. S. and thereupon had caused him to be arrested: The Defendants did conspire together to delay the Plaintiff of his said Suit in peril of his debt, had let the said I. S. goat large without Bail, and it was adjudged to lye for the Plaintiff for this Conspiracy, albeit the taking of Bail were a Judicial Act. Leonards Rep. pl. 269.

Case 32.

Privilege.

Edwards and Tedbury. M. 31, 32 Eliz. Co. B. The Case was as followeth this, Edwards of London was indebted to A. of the same City, Edwards delivered goods to one Tedbury a Carrier in London to carry them thence, and the goods being in his house, A. came there to be satisfied for the Debt of Edwards, the Carrier being then outstanding in the Common place by an Action there depending; and it was adjudged that the goods were priviledged in the Carriers hands. Leonards Rep. pl. 270.

Case 33.

Escape suffered by a Sheriff.

Moyser and Tyrrell. M. 12 Jac. In an Action upon the Case brought against the Sheriff of N. for an escape; upon a not guilty, and special pleading, the Case was this, That a Capias did issue to the Sheriff out of [illegible] where was by a wrong name, the Sheriff returns a non est inventus, and upon this a Testatum issues out to him, and there [illegible] that he is [illegible] name; upon this the Sheriff [illegible] to escape; [illegible] escape, he will be chargeable: Also in this Case, although the first Capias were by a wrong name. Bulstr. 3. part 256.

Case

Case 34.

May, and Proby, and Lumley, Sheriffs of London. Trin. 14 Jac. B.R. In an Action upon the Case for an Escape brought against the Sheriffs of London, and Middlesex, who plead, that they had taken the party upon a Latitat, and that in bringing of him towards the Gaol; Rescous was made of him, and so returns the Rescous as the same was; and it was adjudged a good Return; and so a good plea here; and Judgement was given against the Plaintiff. Bulstr. 3. 198, 199. Escape. Rescous.

Case 35.

Lyningate Cunningham. The Case in this Action was, an Action of Debt was brought by a Plaintiff, who recovered, and had execution by Capias ad Sat. and the party arrested by the Sheriff, and he was released by the Defendant; and in this Case Judgement was given for the Plaintiff, where was held, the Action will lye. Hetleys Rep. 95. Rescue.

Case 36.

Pasch. 16[illegible]. B. R. It was said by Rolls, Chief Justice, That an Action upon the Case will lye against one that brings vexatious Actions against another, or for entering of Actions of a great value, to force his Adversary to put in a great Bail, where he pay but a small cause of action. Siles Rep. Vexatious Suits

Case 37.

Lamb against Dutt. Pasch. 1629. B. R. Upon Antevin, the Court was informed that Lamb had arrested Dutt after a Verdict found against him on a trivial action, to the intent that in the mean time he might get him in custody, upon the Judgement to be obtained, and so to other cause, and therefore prayed the party might be committed. And the Court answered, that this was irregular, and might not be as in a Latitat against a man without cause of Action; the party grieved may have his Action upon the Case for it: Ordered that an Attachment be granted, if he will not discharge the party, or else let him shew cause to morrow why he should not discharge him. Siles pl. 211. Undue proceedings. Practice.

Case 38.

[illegible] Michaelmas 1654. B. R. The Plaintiff brought his Action upon the Case against the Defendant his Attorney, for [illegible] being against him in the Court wherein he was Attorney to the Defendant, [illegible] taken against him [illegible] to the [illegible] guilty [illegible] Judgement [illegible] Undue proceeding. Breach of trust.

Case 39.

[illegible] Winchester. [illegible] out of Chancery [illegible] one A. [illegible] Sheriff there) to distrain the Beasts of B. &c. or that he take Surety

Officer. Dec. 1.

Surety for sufficient pledges to appear the next Court. A. doth distrain the Beasts of B. and for this the Plaintiff gave him the usual Fee, and hee not having taken sufficient Security of B. delivered to him his Beasts again, and B. doth not appear; and this Action was brought upon the whole Case, and adjudged to lye; albeit hee were no Officer. Wild and Dowle. Hill. 1. Car. 2. Latch. Rep. 159.

Case 40.

Cook. 2. p. 485. Action upon the Case, whereas William Pawly Senior, and William Pawly Junior were indebted unto him by several Bonds, in 35 lib. and to obtain this debt, hee procured a Latitat out of the Kings Bench, directed to the Sheriff of Somerset, to arrest him, and shews the course of the Court, that upon appearance, Bail shall be put in; whereupon hee declares, &c. and that the Sheriff made a warrant to Phillip Perry, and others, to arrest them, who by virtue thereof arrested W. Pawly Junior, that the Defendants rescued him, whereby hee escaped, and went to places unknown, so as hee lost his Suit, &c. the Defendant pleaded not guilty; and a special Verdict found this matter, viz. The debt due to the Plaintiff, the prosecuting of the Latitat, for this cause, the warrant thereupon to the Sheriffs, &c. and that William Pawly was also indebted to Phillip Perry Senior, and that hee sued out a Latitat against him, who made also a warrant to the same Bayliff, to arrest him at the Suit of the said Phillip Perry Senior, that it was directed unto them Conjunctim and Divisim that they were not known Bayliffs, that upon the 8 of Janu. 12 Jac. in the night about six of the Clock, they entred the house of Robert Marks Senior, the dwr being open, and Will. Pawly being present, the said Phillip Perry Junior laid his hands on him, and then having held the Warrants in his pocket, said unto him, I arrest you by virtue of a Warrant, but did not shew the Warrant, nor had it in his hand, nor told him at whose Suit, and that the Defendant rescued him from the Bayliffs, and hee escaped; after some reasons, it was adjudged for the Plaintiff. vid. 16 Ed. 3. 4.

Rescue.

SECT. VI.

Case 1.

Inne-keeper.

IN the Case of Calyes. Coo. 8. 32. It was resolved, That to maintain an Action against an Inne-keeper for goods lost, &c. It ought to [illegible] a Common Inne. 2. Hee ought to be a Passenger, not a Neighbour only. An Inne-holder shall not answer for any thing but that which is infra Hospitium; therefore if a Passenger requires that his house be put to [illegible] the Inne-holder shall answer if he be lost, [illegible] if he requires it not. [illegible] Where [illegible] stealeth the goods, the Inne-holder shall not be charged, otherwise if the Host appoint one in his Chamber with him, who doth it: But an Inne-holder shall not be charged, if he require the Guest to put his goods in a Chamber, and hee leaves them in the Court: But it is no excuse to the Inne-holder that he delivered the Keys of the Chamber to the Guest, by that no goods were delivered to him. 3. The Host shall answer for

for Charters if they be stolen; but not if a Guest be beaten, or any wrong done to his person.

Case 2.

Cooke and Yonger, Co. B. Croo. 1. 11. The Count was, That whereas the Office of the Under-Stewardship of the Courts of the Manors of, &c. was antiently grantable for life, with a Fee of three pound six shillings eight pence, and the Bishop of Glouc. did grant the same to the Plaintiff for life, with the same Fee of, &c. payable yearly at two Feasts, issuing out of the said Manors, the Bishop died, and the Plaintiff is ready to keep Court, &c. and the Defendant disturbed him: Found for the Plaintiff, moved in arrest, 1. Because the Prescription is so much a year, and here the payment appointed at two Feasts, and so not warranted by the Statute. 2. That the Office is grantable for life, and he was not for whose life; but these not allowed; for the times of payment are not material, where the antient Rent is reserved yearly. Coo. 6. 37. And the Grant for life shall be intended for the life of the Grantee: But it was adjudged for the Plaintiff. Disturbance in an Office.

Case 3.

Eastcourt and Cope. Patch. 18 Jac. B. R. In an Action of the Case it was thus, A. sued B. and set forth, that he was a Mason, and had a Lease for years of a Quarry, and did use to sell Stones, and that B. did so threaten to sue, beat, or maime his workmen, and those that came to buy, that none would buy, or work there: And it was adjudged that the Action did well lye for threats of Suit, and threats of blows, without Acts. Croo. 2. part 567. Disturbance by threats of Suits, and of blows. In making use of a Quarry of Stones.

Case 4.

White and Ruffden. Mich. 1 Car. 1. Co. B. The Plaintiff sent the Defendant his Horse to Oxford from L. and there to be safe delivered, &c. The Defendant did mistake his Horse, and he demanded him of the Defendant at Oxford, and he refused, but converted him to his own use: After Issue, and Verdict for the Plaintiff, it was moved in arrest Judgement, for that so many wrongs were put in one Declaration, and because the damages were entire: But resolved the Trial good, and the damages well assessed. Croo. 1. 14. Many causes of Action in one Suit.

Case 5.

Kinvion and Davis. Mich. 13 Car. 1. B. R. Error in Action on the Case pro eo quod defend. quendam Canem ad mordend. Oves consuet. apud Hinton scienter retinuit & custod. qui quid Canis, &c. Court held (Absent Brampston) the Declaration naught, for that it did not shew quod sciens Canum prædict. ad mordend. Oves consuet. scien. retinuit. Judgement reversed, nihilo, &c. Croo. 1. 330. Keeping a Dog used to bite.

Case 6.

Rugg and Clarke. Mich. 32, 33 Eliz. B. R. Error of a Judgement in an Action upon the Case, where Clark declare, that where he was possessed of a Gelding, in consideration that he would lend his Gelding For abuse of a thing borrowed

to

Pleading.

to B. to carry three Bushels of Coals from Ware to the house of B. he promised he would not aliter eum onerare, and shews that B. aliter per uram prædict. onerabat spadonem prædict. & magis ponderosius onus super spadonem prædictum imposuit, &c. And Judgement was given, and Error brought, that aliter onerabat, without shewing how, was not sufficient: And for this cause Judgement was reversed. Croo. 1. last publisht. 194.

Case 7.

Lessee at will burn the house.

The Countesse of Salop and Crompton. M. 42 Eliz. B. R. Action upon the Case. The Case was this, That a Lessee at will of a house tam negligenter & improvide kept his fire in the house, that through his default therein, the same was burnt, and for this the Lessor brings his Action; and therein it was held by the whole Court, that for a negligent burning, neither this, nor any other Action did lye: But for cutting down Trees, or any voluntary Trespasse, there an Action of Trespasse lyeth; As it doth for a voluntary spoil of my Sheep by my Shepherd, or of my goods by my Bayliff: But in case of breach of confidence, by such a neglect in my Servant, as where the Shepherd suffers his Sheep to be lost, or shabby, or the like, there for this this Action will lye. And yet in that Case two Judgements were said to be given, that this Action upon the Case will lye in Case where the Lessee for life or years, doth make the Lease at Will, and the Tenant at will shall make the waste, and thereby the Tenant for life, or years is questioned, and damnified by an Action of waste: But in the principal Case Judgement was given against the Plaintiff. Croo. 1. last publisht. 777. 784. See it Croo. 513. Case 5.

Trespasse.

Case 8.

Threatning of Servants that they depart from their work, &c.

Adams and Lacon. 1 Car. Action upon the Case; for that the Defendant did threaten the Servants of the Plaintiff, which were cutting of Trees for Iron-works, &c. to beat and murder them, and to bring Suits, so that they did refuse to work, and the Master lost his Service: At tryal the Jury found onely the threatning with Suits: and Judgment was given for the Plaintiff, albeit motion was to arrest it. Per Curiam. M. 1 Car. 1. Bendl. 157.

Case 9.

Keeping a dogg used to bite.

Bowlton and Banks. Vers. 8 Car. 1. B. R. Action upon the Case; where the Defendant kept a Mastiff, sciens that hee was assuetus ad mordendum Porcos, and that the Plaintiff was possest of a Sow great with Piggs, that the Mastiff bit the Sow, so that she died of the biting: Adjudged for the Plaintiff. Croo. 1. 184.

Case 10.

Monopoly, Action grounded upon it.

Edward Darcy, Thomas Allion. Trin. 44 Eliz. The Case of Monopolies, Action upon the Case; he declared upon a Patent granted by the Queen to Edward Darcy for the sole Trade of playing Cards, That he, and such as hee appointed onely, should have power and license to fetch in from forein parts, make, buy, and sell them: And thereby did inhibit to all others the use and exercise of that Trade of making, and sale of playing Cards: And shewed that the Defendant had taken upon him to use

and

and exercise the said Trade, &c. To which Declaration the Defendant demurred in Law: And it was adjudged against the Plaintiff. See the Case, the Arguments and Reasons thereof, Coo. 11. 84. and Noys Rep. 173, 174, &c.

Case 11.

Coo. 12. 128. In an Action upon the Case; It was resolved by the whole Court, That if a Sumner return one summoned in a Court Christian upon his Oath, where in truth he was not, and thereby he is pronounced Contumax, and after he is excommunicate; he may have this Action upon the Case; for although the proceeding be Ecclesiastical, yet the damage is temporal: And there it was resolved, that for a false Oath in a Court of Justice, whereby any special damage comes to another man, he may have this Action: As if one to be a pledge swear he can spend forty shillings per Annum, or where by any special Affidavit, I am molested. F.N.B. 109. 27 H. 6. 25. And that though the matter be meerly Ecclesiastical, yet if the party grieved hath damages, either by any wrongful proceedings of the Judge, or Mis-feasance, or Non-feasance, or falsity of any Minister, or by unjust prosecution of the party, the party grieved may have an Action upon the Case, and recover his damages: And there Doct. and Stud. 118, 119. was agreed. Action upon the Case against the Ordinary for a wrongful excommunication touching any thing out of his Jurisdiction: and 47 H. 6. 8. Fitz. Harbert. If an Arch-Deacon refuse to induct a Clerk, &c. he shall have this Action, to which all the Court agreed, with which agrees 26 H. 8. 3. So F.N.B. 92. If one proceed against a prohibition, the party may have an Action of the Case against him: So if a Bishop excommunicate after prohibition; or, in case where he doth it against Law: So where one had sued to Rome.

For a false Return and Oath.

Ecclesiastical matter.

Suits in an improper Court.

Arch-Deacon not to induct.

Case 12.

Wimberly and Thompson. In Action upon the Case: That the Plaintiff was possessed of a Fountain of Silver, to the value of four hundred pound, and delivers it to one to transport over Sea, and sell it: And in the Account it appears, that the Factor afterwards melted the Fountain, and converted it to his own use; for which the Plaintiff brought his Action of the Case, and they were at Issue, and it was alledged, that where in truth he was damnified to the value of four hundred pound, yet there made Oath that it was but of the value of two hundred pound: And for this Oath it was adjudged no Action would lye. Noy. 6.

For an Oath. Perjury.

Case 13.

Estcot and Laureny. B. R. Trin. 36 Eliz. Action upon the Case; The Plaintiff shewed, that the Lord Berkley, by his Indenture demisit &c. ad firmam tradidit totam firmam suam tolnetum & proficuum Nundinarum & dierum ferialium infra Manerium & Burgum de Thenbury, for one and twenty years; and that the Defendant had disturbed and hindred him from the taking of divers pieces of Mault infra Manerium & Burgum prædictum: And Judgement was given for the Plaintiff, and the Declaration admitted to be good. Owens Rep. 107.

Disturbing one in his Fair.

Case 14.

Parson not taking away his Tithe in time convenient.

A Parishioner brought an Action against one, being Parson of L. and declared, that hee at the Parish of L. had laid out the Parson fifteen Cheeses for his Tithes, and the Defendant suffered them to remain in the house of the Plaintiff for such a time, and did not take them away, to his damage, &c. in this Case it was said, That when an occupier of Land sets forth his Tithes, the property is altered, and is in the Parson; and then if hee suffer it to remain upon the Lands of the Parishioner, an Action of the Case lyeth against the Parson for it. Pasch. 20 Jac. B. R. Wiseman and Denhams Case. Leys Rep. 69. See Case 37. infra. out of Latch. Rep. 18.

Case 15.

For negligence about fire.

Action against Husband and Wife.

Shelly brought an Action upon the Case against Burre, and his Wife, that adeo negligenter & improvide custodierunt ignem suum, that the house of the Plaintiff was burnt: Verdict for the Plaintiff, motion to arrest Judgement: For that a woman covert neither sues, nor is sued: And it was said, that upon this special Custome of the Realm, the Action is to be brought against the Husband, and not against the Wife nor Servant. As in the Case of an Hostler, that loseth my goods: But the Case being new, the Court would advise. Bendloes. 153.

Case 16.

Inne-keeper for goods lost.

Declaration.

Harbert, a Carrier, brought an Action upon the Case against Lane, an Inne-keeper, for goods lost out of the Inne. Pasch. 1653. B. R. viz. Packs full of Linnen Cloth, and other goods, and after a Verdict for the Plaintiff; it was moved in arrest of Judgement, for that it was not said what Cloth, or of what value was in the Packs, and so the Declaration incertain: But Rolls, Chief Justice, the Declaration is good, after Verdict. Siles Rep. 370.

Case 17.

For not returning a Writ by a Sheriff.

Clerk. H. 44 Eliz. C.B. Action upon the Case, for, that one I. S. being out-lawed at the Plaintiffs Suit, and a Capias utlagatum awarded against him, directed to the Defendant, Sheriff of the County of Bucks, returnable at such a day, &c. and because hee did not return the Writ, the Action was brought, and Judgement against the Defendant, by non sum informatus; and upon a Writ of Inquiry of damages, damages found to forty pound: And now Williams moved in arrest of Judgement, that an Action lyes for not returning of the Writ: But hee ought be onely amerced for his contempt. And of that opinion were Walmsley and Warberton, for in not returning this Writ, the Queens command is neglected, which hee ought to punish. But by Walmsley, if the party who sues that Writ, shews to the Sheriff, the party, who is to be arrested, and delivers unto him the Writ, requiring him to make the arrest: If hee doth it not, an Action upon the Case lyes against him: But here, non constat whether the party was arrested, or that the Sheriff could finde him; wherefore, &c. Kingsmil, although the Queen may punish the contempt, yet the party, having losse by not returning of the Writ, may have his Action also: And the Clerks said, there were many Precedents,

cedents, that such Actions have been brought; wherefore absente Anderson, adjournatur. Croo. 1. part last publisht. 873.

Case 18.

Colston, and Rosse, and Levet. T.44 Eliz. B. R. Action of the Case against the Defendants, late Sheriffs of York, for that, whereas according to the Custome of the City of York, hee levied a Plaint of Debt of fifteen pound against one Leyton, before the said Sheriffs in the Court of Guild-Hall, according to the custome there, and thereupon had Summons awarded returnable at the next Court there, which was returned Nihil, and afterwards had a Capias awarded returnable at the next Court, before the foresaid Rosse and Levet. At which Court such a day holden, the Serjeant returned cepi Corpus, & paratum habuit, &c. At which Court holden before the said Ross and Lever, then Sheriffs, the said Leyton was committed unto the Queens Gaol, under the custody of the said Defendants, there to remain until hee satisfied the debt, or the Plaintiff sit inde præclusus; whereupon hee there remained 17 Jan. 43. usque 18 Jan. 43 at which day the Defendants suffered him to go at large, the Plaintiff not being satisfied his debt, and so went into places unknown, whereby hee is deprived of his debt, unde Actio accrevit, the Defendants plead, that they let him at large by reason of a Writ of Priviledge awarded by the Council of York, &c. And it was thereupon demurred, because they did not alledge the authority of the Council there, &c. And it appears not to the Court, that hee might be priviledged there; for it doth not appear, that they had authority to hold Plea in Debt, so as the Plaintiff might have Justice there, and for that, and other causes, it was held, that the Barre was not good, and that the Sheriffs, although they let him at large by colour of the Writ of Priviledge, yet the Writ not being a good Warrant, they are responsible to the Plaintiff; for they, at their peril, are to take heed what warrant they had to let him out of their custody: But then divers Exceptions were taken to the Declaration by Cook, the Attorney general; first, because a Capias is awarded returnable at the next Court, which ought not to be so, but there ought to be a day certain of the Return, sed non allocatur, for the Processe at the most is but erronious, whereof the Sheriffs shall not take advantage: And the Plaintiff is to declare according to the Record, and hée cannot vary from it. Secondly, Because the Capias is awarded returnable before Rosse and Lever, which is not good; for it may be they should dye, or be removed before the Writ returned; and therefore it ought to have bèen awarded returnable before the Sheriffs, without naming their proper names, as of Processe awarded out of this Court, or Common Bench, are alwaies returnable before the Justices of the Bench, without their proper names, for the Reasons before: But all the Justices said, it was well enough notwithstanding, when it appears, that they were Sheriffs at the time of the Return, as it appears here by the Record that they were: So, although a Writ awarded to the Sheriffs, without their proper names is the surest way, for that it may be hée may be removed before the executing thereof, but if it be awarded unto him by his proper name, and hee be Sheriff at the time of the Executing, and return thereof, it is well enough: So of Processe awarded out of this Court returnable before the Justices by their proper names, it is well enough in Law, although not so in policy, for the reason above said. Thirdly, Because it is not alledged, that the said Leyton was ar-

Undue proceedings in a Court.

Escape.

rested, and if hee were not arrested, there cannot any Action be brought for his escape, sed non allocatur; for, when the Defendants returned cepi corpus, & paratum habent, it is to be intended that hée is arrested, yet the Record is, that hée is committed per Curiam to prison, which is sufficient, the party being present in Court, without an arrest. Fourthly, The Commitment is, ibidem remansurus quousque the debt be satisfied, or the Plaintiff barred, which is not a lawful commitment; for then hée should not be bailed, which is against Law, and the course of all Courts. But the Court held it to be well enough, for that it is the manner of commitments in all Courts; for the Court is not to demand Bail, but yet if hée can finde Sureties, hée shall be bailed, for it is so intended in the commitment; wherefore notwithstanding these Exceptions it was adjudged for the Plaintiff. Croo. 1. last publisht. 893.

Case 19.

Disturbance in an Office.

Harvey and Newlyn. M. 43 Eliz. B.C. Action upon the Case; whereas Sir James Allington was seized in fée of the Mannor of Milbourn, and of another Mannor, and granted to the Plaintiff by déed, to be his Bayliff of the said Mannor, for his life, and that the Defendant had disturbed him in the said Office, viz. in his collecting of Rents, viz. of the Rents of S. and D. &c. The Defendant confesseth the Seisin of Sir James Allington, and his grant to the Plaintiff, but that afterwards hée sold the said Mannors to I. S. who appointed the Defendant to be Bayliff there, whereupon hée collected the Rents, &c. And it was thereupon demurred, and all the Court were of opinion, that the purchase of the Mannors might discharge the Plaintiff, and revoke that Grant, although it were for life; because hée sheweth not, that there was any fée granted for the Execution thereof, nor that hée had any other profits by exercising of it; for without profit it is but an Office of trouble, and then the Plaintiff hath not any cause to complain, when hée hath not any losse: But if hée were to have had a fée, or other profit in certain for executing thereof, it had been otherwise; wherefore it was adjudged for the Defendant. Croo. 1. last publisht. 859.

Case 20.

Rasure and Forgery.

Kenton and Wallinger. T. 43 Eliz. B. R. Action upon the Case; whereas sentence of Excommunication was against one *Harris*, the instrument whereof was delivered to the Defendant, being Curate of the Parish, where the said *Harris*, and Plaintiff inhabited, to publish in the Church, that hée maliciously had razed out the name of *Harris*, and put in the Plaintiffs name, and read it in the Church, whereupon hée was inforced to be absent from Divine Service, and to be at the expence, to procure a discharge for himself. The Defendant pleaded not guilty, and found against him: And it was moved in arrest of Judgement, that an Action lay not for this matter; for it is Spiritual, whereof the Temporal Law takes not any regard: But the whole Court resolved, that the Action was maintainable; for, although the Excommunication be Spiritual, and so is the denouncing thereof, yet the razing and alteration thereof, is méerly Temporal, for which an Action well lyeth at the Common Law; wherefore it was adjudged for the Plaintiff. Croo. 1. last publisht. 838.

Case

Case 21.

Waldo and Lambert. H. 44 Eliz. B. R. Action upon the Case against the Defendant, Sheriff of Southampton, for that, whereas the Plaintiff had sued a Latitat against one Arthur Lake, who was indebted unto him in such a summe by Bond, to the intent that hee being arrested, and having put in Bail according to the course of the Court; hee might declare against him for that debt; and that this Writ being delivered to the Defendant, being Sheriff of the County of Southampton, for that intent, and hee arrested him, and afterwards at Westminster, in the County of Middlesex, suffered the said Lake to escape: The Defendant pleads, that hee arrested him, according as the Plaintiff hath declared: But that afterwards in the same County, hee rescued himself there per gents de County, absque hoc, that hee suffered him to escape at Westminster: And it was hereupon demurred, and adjudged to be no Plea: for the Sheriff at his peril ought to keep his prisoner, and may take sufficient power of his County to arrest any one upon mean Processe: And although it was allowed a good Return here, and Processe shall be awarded against the Rescousers to punish them, yet that is no answer in an Action brought against him for such an escape: Also the traversing of the place of the escape is not good; for hee cannot by the traverse make the place material; wherefore it was adjudged for the Plaintiff, Nota, H. 14 Jacobi Mays Case adjudged, that where the Sheriff returneth Restous upon a mean Processe, this is a good Plea in an Action upon the Case. Croo. 1. last publisht. 868.

For a Rescue of a prisoner.

Case 22.

Seyman and Gresham. M. 44 Eliz. B. R. Action upon the Case, supposing that one G. Berisford was indebted unto him by a St. Staple in two hundred pound, and that hee sued Execution, and that the Sheriffs of London, by force of that Writ, impannell'd a Jury to enquire what goods, &c. and that there were divers goods of the said G. Berisford in such an house in London: And that the Sheriff came with the said Jury, to have a view of them, and to appraise, and seize them for this debt; and that the Defendant, præmissorum non ignarus, shut the door, and disturbed him to make Execution, &c. The Defendant entitles himself to the possession of the house, by reason of a Joynt-Lease made unto him, and one G. Berisford, and that hee had it by Survivorship, and that hee shut the door for the salvation of his possession: The Plaintiff replyes, that the said G. Berisford mentioned in the Barre, and hee who was obliged in the Statute, were all one person: And it was thereupon demurred. The principal Question was, Whether this shutting of the door was a disturbance of the Execution? And whether the Plaintiff might thereupon maintain this Action? And first, it was agreed by the whole Court, that upon a Capias ad satisfaciendum, the Sheriff may not break open any mans house, to make Execution, but he is punishable for doing it: But upon a Capias utlagatum hee may well enter any mans house to apprehend him; for no place ought to protect him against the Queen; and hee being out of the Law, shall not have the protection of the Law: And this Case, Tanfield said, was resolved by all the Justices of the C. B. in Sir Thomas Keimes Case. But whether hee might upon a fieri facias, or extendi fac. enter the house of any to take Execution

For hindring the course of Justice in the Sheriffs Execution of his Office.

Execution of the goods, and to break the parties house to make Execution, they doubted. Vid. 18 Ed. 2. Execution. 250. 13 Ed. 4. 9. 18 Ed. 4. 4. But if the door be open, there is no doubt, but that the Sheriff might enter to do Execution: For the Law gives him authority thereto, as an Executor may enter to take goods left there by the Testator. And for this cause Gawdy and Popham held, that the Action here well lay, because by this shutting of the door, the party was disturbed to have his Execution; but Fenner and Yelverton e contra, for the goods being in the Defendants house, who is a stranger to the Execution, he is not bound to take Conusance of the Sheriffs intent, in coming to make Execution, and his shutting the door was lawful: And although there were losse to the Plaintiff, yet it is damnum sine injuria: And it appears not by what means that the goods of the Conusors, which are in the Defendants house, came thither; and if they were taken by the Defendant as a Trespassor, the party, whose goods they are, or the Sheriff upon Execution may come within the house, if the door be open, to seize them, because the Defendant had them by unlawful means: But if the Defendant hath taken them by lawful means, viz. by Bailment, or otherwise, neither the party himself, nor the Sheriff can come within the house to seize them: And therefore the shutting of the door is no cause of Action for the Plaintiff; and therefore the Action lyeth not, &c. Et adjournatur. Note, that afterwards M. 2 Jacobi this Case was argued again: And then Williams agreed with the opinion of Yelverton and Fenner in omnibus; and that the Sheriff might not break any mans house to take Execution, unlesse in the Queens Case, or for a contempt, &c. wherefore according to their opinion it was adjudged for the Defendant. Croo. 1. last publisht. 908.

Case 23.

For disturbing a man in his Fair, &c.

Dent and Oliver. M. 2 Jacobi. B. R. Action sur le Case, supposing that he was seized in Fee of the Manor of Hallington, and of a Fair to be held there every Ascension day: And that the Defendant disturbed him to take Toll, &c. The Defendant pleaded not guilty, and found against him; and now moved in arrest of Judgement, that the Declaration was not good, because he doth not shew a title to the Fair by grant, sed non allocatur, because it is but a conveyance to the Action, and is not any claim thereof, as to the Right, as in a quo warranto; and therefore the Declaration without special title comprized therein, is good; wherefore it was adjudged for the Plaintiff. Croo. 2. part 43.

Case 24.

For digging a Pit in a Common, by which another mans beast is hurt.

Blyth and Topham. P. 5 Jacobi. B. R. Action upon the Case, for that he digged a Pit in such a Common, by occasion whereof, his Ware being straying there, fell into the said Pit, and perished; the Defendant pleaded not guilty, and found for him: And now the Plaintiff, to save costs, moved in arrest of Judgement upon the Verdict, that the Declaration was not good; for when the Ware was straying, and he shews not any right why his Ware should be in the said Common, the digging of the Pit is lawful as against him; and although his Ware fell therein, he hath not any remedy; for it is damnum absque injuria; wherefore an Action lyes not by him: And of that opinion was the whole Court; wherefore it was adjudged upon the Declaration, that the Bill should abate, and not upon the Verdict. Croo. 2. part 158.

Case

Case 25.

Rich and Kneeland. M. 11 Jac. B. R. Action upon the Case; whereas the Defendant was a Common Barge-man, and use to carry for hire from London to Milton, and other places in Kent, that he delivered unto him a Portmantle, and thirty pound therein, to carry, and gave unto him to him two pence for the carriage; and that the Defendant (am begg-geck of custodivit, that it was taken from him by persons unknown, and so he lost it: The Defendant pleads (confessing the receipt) that he was a Common Barge-man, but that he fearing to carry it, delivered it to I. D. to carry, and that he gave notice thereof to the Plaintiff, and he agreed thereto, and discharged him of the carriage; the Plaintiff traverses that he did not discharge him; and it was thereupon demurred, and adjudged for the Plaintiff, for the delivery by this Affirm is not material, but the onely matter traverseable is the discharge, which is denied, and found for the Plaintiff: An Error being brought, was assigned, first because this Action lyes not against a Common Barge-man, without special promise; But all the Justices and Barons held, that it well lyes, as against a Common Carrier upon the Law. Secondly, they held, that the Traverse is good; wherefore the Judgement was affirmed. Croo. 2. part 330.

Against a Carrier, for losing of a mans goods

Case 27.

Ford and Hoskins. P. 13 Jac. B. R. Action upon the Case, against the Defendant, being Lord of the Manno of Bedminster, in the County of Dorset, whereas Jo. Ford was Copp-holder for life of the said Manno (where the custome of the Manno is, that a Copp-holder for life may nominate his Successor to have it for life; and that such a person nominated should compound with the Lord for his Fine; and if he could not compound, then he should give such a Fine as the Domage of the Manno should assesse, and should be admitted, and hold for his life) and alledged in facto, that his Father nominated him his Successor to the said Copp-hold, to have it for life, and dyed, and that he tendred his compellation, and could not be accepted; whereupon the Domage assessed a Fine of forty shillings, which he offered to pay, and the Defendant would not accept thereof, nor admit him, whereby he lost the benefit of the said Copp-hold, nor could sell it; and thereupon he brought the Action: The Defendant pleaded not guilty, and found against him; and it was now moved in arrest of Judgement, that this Action lyes not: for although it hath been alledged, that this custome pretended, is good yet for as much as he who is so nominated, hath not jus ad rem, nec jus in re, until admittance; and a Copp-holder, in the eye of the Law, is but Tenant at the Lords will, and if the Lord will not hold Court, he hath no remedy to compel him to admit him, but by order of Chancery. Coo. l. 4. f. 28. Wellwicks Case, 32 H. 6. 3. Lu. f. 2. The Court held, that the Action lay not, for he hath not any interest therein; and it would be infinite if every Copp-holder, upon pretence of refusal, should have an Action: for then the Lord at his peril ought to admit, which would be mischievous; And there never was any Action brought before these times against a Lord of a Manno, for non admittance, but alwaies the remedy against the Lord was only in Chancery; wherefore there is no any reason to give allowance to such framed Actions, newly devised: It was therefore adjudged for the Defendant, Croo. 2. part 368.

By a Copp-holder against a Lord for not admission of him.

Case

Case 27.

For disturbing a mans servants in his work.

Garret and Taylor. P. 18 Jac. B. R. Action upon the Case; whereas hee was a Free-Mason, and used to sell Stones, and to make Stone-buildings, and was possessed of a Lease for divers years to come, of a Stone-pit in Hedington, in the County of Oxon, and digged divers Stones there, as well to sell, as to build withall, that the Defendant, to discredit, and to deprive him of the commodity of the said Mine, imposed so many, and so great threats upon his work-men, and disturbed all comers, threatning to maim, and vex them with Suits, if they bought any Stones; whereupon they all desisted from buying, and the others from working, &c. After Judgement by nihil dicit for the Plaintiff, and damages found by Inquisition to fifteen pounds; it was moved in arrest of Judgement, that this Action lay not; for nothing is alledged but meer words, and no act nor insult: And causeless Suits for fear are no cause of Action, sed non allocatur, for the threatning of Maim, and Suits, whereby they durst not work, or buy, is a great damage to the Plaintiff: And his losing the benefit of his Quarries is a good cause of Action; and although it be not shewn how hee was possessed for years, by what title, &c. yet that being but a conveyance to this Action, was held to be well enough; and adjudged for the Plaintiff. Croo. 2. part 567.

Case 28.

Rescue of a prisoner.

Hodges and Robert Marks, &c. T. 16 Jac. B. R. Action upon the Case; whereas William Pawly senior, and William Pawly junior, were indebted unto him by several Bonds in five and thirty pound, and to obtain this debt, hee procured a Latitat out of the Kings Bench, directed to the Sheriff of Somerset; to arrest them, and shewe the course of the Court, that upon appearance Bail shall be put in; whereupon hee declares, &c. And that the Sheriff made a Warrant to Phillip Perry, and others, to arrest them, who by virtue thereof arrested William Pawly junior, that the Defendants rescued him, whereby hee escaped, and went to places unknown, so as he lost his Suit, &c. The Defendants pleaded not guilty, and a special Verdict found this matter, viz. the debt due to the Plaintiff, the prosecuting of the Latitat for this cause, the making of the Warrant thereupon to the Sheriffs, &c. And further they find that the said William Pawly was also indebted to Phillip Perry senior, and that hee sued a Latitat against him, who made also a Warrant to the same Bayliff, to arrest him at the Suit of the said Phillip Perry senior, that it was directed to them conjunctim & divisim, that they were not known Bayliffs, that upon 8 Jan. 12 Jac. in the night about six of the clock, they entred into the house of Robert Marks senior, the dwr being open, and W. Pawly being there present, the said Phillip Perry junior laid his hands on him, and then having both the Warrants in his pocket, said unto him, here I do arrest you by virtue of a Warrant that I have, but hee did not shew unto him the Warrant, nor had it in his hand, nor told him at whose Suit hee arrested him, and that William Pawly did not demand to see the Warrant, nor at whose Suit hee was arrested, and that the Defendants rescued him from the Bayliffs, and hee escaped, &c. si super toram materiam, &c. And it was first resolved, that this arrest, without shewing the Warrant, and without telling at whose Suit, until the other demanded, was legal, and well enough, and that hee needed not shew

shew the Warrant till the other obeyed, and demanded it. Vid. Co. l. 5. f. 68. in Mackalleys Case, & l. 6. f. 54. Countesse of Rutlands Case. Secondly, that this arrest in the house, the door being open, and at six of the clock at night, was good enough against the party arrested, and the rescuing him was utter unlawful. Thirdly, that this arrest, without having the warrant in his hand, and having both Warrants about him, was well enough, although hee did not shew by which of the Warrants hee arrested him; for hee being under the Bailiffs arrest, in custody there, for all causes for which the Sheriff hee made his Warrants against him, although the Sheriff, or Bailiff do not mention any specialty. Vid. Co. l. 5. f. 81. Garnons Case, and f. 89. Frosts Case. Fourthly, it was held, that for this rescous, the Plaintiff, at whose Suit the arrest was, may maintain an Action very well; for hee hath the losse, and cannot save his Action against the Sheriff, and therefore it is reason, hee should have his Action against those who did the injury to him, whereby hee lost his money, and his means to recover his debt, as it was latelie here adjudged in the Case of May and Proby, whereupon it was adjudged for the Plaintiff. Croo. 2. part 485.

Case 29.

Fowler and Sanders. M. 18 Jac. B. R. Action upon the Case, for laying in the high way in Coggshall to Braintree divers loads of Loggs, whereby they much straitened the high way, so as the Plaintiff upon the evening of such a day, riding on the said way, his horse stumbled upon those blocks, and much hurt him, for which, &c. The Defendant confess it to be a high way, but he saith, that the Town of Coggshall is an antient Village, wherein all the Inhabitants there, having antient houses, used there, whereof, &c. to lay loggs in waste places of the said way before their doors for their fuel, leaving sufficient passage for Chariots, horse-men, and foot-men; and that hee was seized in fee of an antient house, and laid loggs for his fuel in waste places of the high way, leaving sufficient for passage of Chariots, horse-men, and foot-men, &c. And the Plaintiff riding by the high way, improvide turned his horse upon the blocks, and fell, &c. whereupon the Plaintiff demurred, and without much argument it was adjudged; First, that the Action well lay for the Plaintiff, because hee, having special damage, had cause to bring that Action, although the Nuisance be a publick Nuisance. Secondly, that the prescription to make a Nuisance is not good, for it is against Law to prescribe in such a manner. Thirdly, this prescription for the Inhabitants is not good; wherefore it was adjudged accordingly. Croo. 2. part 446. Coo. 5. 73. 27 H. 8. 27.

Nuisance special in a high way.

Case 30.

Watson and Notburies Case. H. 20 Car. 1. B. R. Action upon the Case was brought against the Defendant for procuring a Commission of Bankerupts to be sued out against him, by virtue of which he broke open his shop, took away his goods, and shop books, by reason hee was discredited in his Trade: the Defendant pleaded, that the Plaintiff had before this brought his Action of Trespasse for this, and recovered damages, &c. and that a Recovery in one personal Action, is a Barre in all personal Actions for the same thing. In this Action it was resolved, that the Action was maintainable, and that the Plaintiff may bring which of

Causing a Commission of Bankerupts to be sued out against a man.

 these

these he will, and whether of them first he pleaseth, that the breaking open his shop, &c. in this Action was mentioned onely by way of Inducement, &c. Siles 3, 4.

Case 31.

For not grinding at the Plaintiffs Mill.

Hardin and his Wife against Green. Trin. 14 Jac. Rotulo 2263. In an Action upon the Case brought for not grinding his Corn at the Plaintiffs Mill, and there, that the Bishop of Salisbury was seized of four Customary Mills, called A. in his demesne as in fee of right of his Bishopprick, and prescribes that all the Inhabitants and Residents within the City of Salisbury, holding any antient Messuages of the said Bishop in right of his Bishopprick, were, time out of mind, used, and bought to grinde all their Corn whatsoever spent in their houses, or exposed to sale in the said City, at the said Mills, of the said Bishop, and no where else, without the licence of the said Bishop, and to pay Toll therefore to the said Bishop, his Successors Bishops, or their Farmers for the time being, and in consideration thereof the Bishop, his successors, or Farmers, for the time being of the said Mills, time out of mind, have been used and accustomed at their own charges, from time to time to keep and maintain a Servant expert in grinding, as well by night as day there attending, to grinde their Corn as soon as conveniently might be; and the Plaintiff shews that such a day the Defendant was, and yet is, an Inhabitant in one antient Messuage, in the said City, held of the said Bishop, and he potenced, intending to deprive the Plaintiff of the profit of his Mill, did such a day grind divers sorts of Corn in other Mills, without the Bishops leave, to his damage, &c. The Defendant pleads Non Cull, the Jury find the Defendant guilty for a longer time, than the Plaintiff had interest in the Mill, and gave damages ratione, and upon a motion in arrest of Judgement, adjudged naught.

Case 32.

For not grinding at his Mill.

Kemp and Gord. Trin. 1654. B. R. An Action of the Case was brought by the Mayor and Commonality of the Town of Liscard in Cornwall against Gord, for not grinding at their Common Mill. Defendant demurred to the Declaration, because the Customs is not alledged upon which the Action is grounded; but Judgement was given for the Plaintiff. Siles Rep. pl. 421.

Case 33.

Monopoly.

Sims and Wilson. Pasch. 1649. B.R. The Plaintiff brought an Action upon the Case upon the Statute of Monopoly against the Defendant; the Defendant pleaded the Statute of Limitation of Actions in Barre of the Action, the Plaintiff demurred, and sayed, that it was not within that Statute, because got an Action upon the Case at the Common Law, but an Action upon the Case grounded upon the Statute of Monopolies. But it was endeared it was an offence at Common Law, yet adjourned for the time till next Term. Siles Rep. 214.

Case 34.

Against an Inne-keeper.

Drope and Thair. Trin. 1 Car. 1. The Matter in this Action shewes, Consuetudo Regni, was, that Hosts should keep the goods of their guests,

ubi

ubi hujusmodi hospitii tenentur transeuntes, and shewed, that one Rowly, his Servant lodged in the Inne, the Servant being Common Hostler, and had such goods of his Masters with him, which by negligence were stolen; Verdict and Judgement was for the Plaintiff, albeit it was moved, that it is not said, the Servant was transient, viz. rebelling Latch. Rep. 126, 127.

Case 35.

Against a Hundred upon a Robbery.

Tutter against the Inhabitants of Dacorne, upon the Statute of Hue and Cry, alledging the Robbery to be committed at S. and R. in divisis Hundredorum de D. & C. And that hee made Hue and Cry, and gave notice of the Robbery at Southmins within the County of Midd. neer the Hundreds aforesaid, and shewed all other circumstances according to the Statutes; the Defendants plead not guilty, and found against them; motion to arrest the Judgement; for hee alledgeth the Notice to be at Southmins, within the County of M. which is another County from that where the Robbery was done, and doth not say prope locum ubi Robberia facta fuit, but prope Hundredum, which may be ten miles from the place where the Robbery was done; and it was adjudged good, and for the Plaintiff, Croo. 1. 29, 30.

Case 36.

Pleading.

Long and Bennet. 23 Car. 1. B. R. Stile. P. 19. Long brings an Action upon the Case against Bennet, and declares, that hee would not suffer him to take unum Acrum Ligni, which hee had sold to him in such a place: after a Verdict for the Plaintiff, it was moved in arrest of Judgement, that the Declaration ought to have been unum Acrum Bosci, and not Ligni, for that was uncertain: The Court said, they would advise of the Exception, because it was an Action of the Case: the same Term Judgement was given, because damages onely were to be recovered, and the words used were but inducements to describe the thing for which damages onely were demanded, yet it might have been more properly expressed.

Case 37.

For Tithe not taken away in time convenient after it is set forth.

Stilman and Chanor. Hill. 1 Car. 1. B. R. Upon the Statute of 2 Ed. 6. chap. 13. for setting out Tithes, the Case was, Corn was set out for Tithe, and the owner of the Land doth take the Corn damage feasant, but in the Declaration doth not shew how long the Corn did remain upon the Land, and per Curiam it is not good, for it doth not appear to be any damage to the owner of the Land, for that it is not shewed how long it was upon the Land; and the usual course in such Cases is, If Tithes be set out, and the Parson doth not take it in due time, the party may have an Action upon the Case. And per Curiam one may not distrain shocks of Corn, but hee may distrain a stack damage feasant: Also after the Tithe is once set out clearly, the Parson by the Statute may have an Action of Trespasse against him that shall take it away: And yet if a meer stranger set out Tithes, this will not settle any property in the Parson, so that the Parson may have an Action for the taking of it away: Latch. Rep. 8. See before Case 14. out of Leys Rep. 69.

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